Nos. 586 and 601.

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Brief of Thornton for P. E. (on mo

Filed Mar. 14, 1898.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1897.

NOS. 586 & 601.

JOSEPH KIPLEY,
Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS on the relation of EDWARD C. AKIN, Attorney General,
Defendant in Error.
} Error to Supreme Court of Illinois.

BRIEF FOR PLAINTIFF IN ERROR ON MOTION TO DISMISS WRIT OF ERROR WITH COUNTER MOTIONS.

CHARLES S. THORNTON,
Attorney for Plaintiff in Error.

Geo. Hornstein & Co., Printers, Chicago.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

No. 586.

JOSEPH KIPLEY,
Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS
ex rel. AKIN, Attorney General,
Defendant in Error.

In Error to the Supreme Court of Illinois.

Brief for Plaintiff in Error, in Resistance of Motion to Dismiss with Counter-motion for leave to file Supplemental Record and to unite the two writs of error sued out on said record by consolidating causes Number 586 and Number 601 of the October Term, A. D. 1897, of this court.

In the record in this cause the plaintiff in error in his answer averred that the said Civil Service Act was and is unconstitutional and void for the following reason, that the said act purports to confer judicial powers and authority to make and enforce judgments and decisions of a non-judicial body as described and set forth therein.

(See Rec., 51.)

This answer was filed on the return day of the rule to answer which was June 14, 1897. Afterwards and on the 7th day of October, 1897, the plaintiff in error, having in the meantime filed a plea in bar, setting up an ordinance which had been passed on June 28, 1897, asked leave to withdraw the plea and to amend his answer so as to set up the constitutional questions in his answer in the precise language in which they are stated and set forth in the following assignment of errors and to plead the said ordinance by way of supplemental answer. And afterwards and on the 12th day of October the Supreme Court of Illinois denied the said motions and each and all of them. This decision was a denial of the rights, privileges and immunities claimed under the Constitution of the United States.

(See Rec., 80–86, inclusive.)

Again, afterwards and on the 18th day of October, 1897, the plaintiff in error moved to discharge the rule to answer and to quash the same, and also to dismiss the petition and all proceedings had thereunder because the said court was without jurisdiction to grant the prayer of said petition, setting forth in said motion the identical constitutional questions which were raised in the proffered amendment to his answer as aforesaid.

And afterwards and on the 19th day of October, 1897, the court denied the said motion to quash the rule and dismiss the proceedings; this decision was also a denial of the rights, privileges and immunities claimed under the Constitution of the United States.

Afterwards on the 22d day of December, 1897, the said court entered an order awarding as against the plaintiff in error the peremptory writ of mandamus asked

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for by the relator; this was a decision also in denial of the rights, privileges and immunities claimed under the Constitution of the United States.

And thereupon the court entered its judgment that the said respondents (among whom was the plaintiff in error), pay the costs of these proceedings.

See Rec., 140, 141.

The case is reported 171 Ill., pp. 44-93.

In the opinion it is said:

"*We deem it proper to dispose of the constitutionality of this act in view of the fact that the counsel for the respondent Kipley, furnishes us with an elaborate argument against its constitutionality, and the petitioner and the respondents, who are Civil Service Commissioners, present equally elaborate arguments in favor of its constitutionality.*" 171 Ill., pp. 57, 58. See Rec., 99; see also pp. 13, 14, Brief for Deft. in Error.

In view of all this we are somewhat surprised at the motion of the learned counsel for the defendant in error to dismiss. Opposing counsel also insists in his brief upon this motion that because at the time the writ of error was sued out on the 19th day of January, 1898, and petition for a rehearing was pending and undecided in said court, the said writ was prematurely taken. We bring with us here a supplemental transcript of the record, showing that afterwards and on the 4th day of February, 1898, the said court denied the said petition for a rehearing. This we claim is conclusive, leaving as it does the judgment of December 22d, to which the said writ of error was aimed, in full force and effect. We ask leave to file this supplemental record here as counter to the motion to dismiss. In order to save all question as to whether the said writ of error was premature or not, plaintiff in error has sued out another writ of error

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as shown by this supplemental transcript and brings with it an assignment of errors in which the subsequent decisions of the said court in denial of said rights of the plaintiff in error are set forth. And we further ask the court to receive the said supplemental record with the said assignment of errors and to consider the cases made by the two transcripts of the same record as one. We have caused the said second writ of error with the entire record to be docketed as Number 601, of the October Term, A. D. 1897. We respectfully ask the court that these two cases may be consolidated and heard and disposed of together as one.

Although the counsel for the defendant in error does not move to dismiss *or to affirm*, yet for the reason that he claims and insists that no constitutional question is shown by the record, we now proceed to the statement of the case and to discuss the constitutional questions specified in the following assignment of error:

ASSIGNMENT OF ERRORS.

And now comes Joseph Kipley, the plaintiff in error above named, by Charles S. Thornton, his attorney, and shows unto the court that in the record of the Supreme Court of the State of Illinois, in that certain cause wherein the People of the State of Illinois, on the relation of Edward C. Akin, attorney general, ask for a writ of mandamus against Joseph Kipley, Superintendent of Police of the City of Chicago, and Adolph Kraus, Hempstead Washburne and Dudley Winston, Civil Service Commissioners, which writ was awarded by order of said Supreme Court of Illinois, of date December 22, 1897; from which order the said Kipley, plaintiff in error, has sued out of the Supreme Court of the United States a writ of error.

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There is manifest error in this:

First. The Supreme Court of Illinois erred in granting leave to the relator to file his petition therein and in ruling the respondents to answer the same.

Because that certain act of the General Assembly of the State of Illinois entitled " An Act to regulate the Civil Service of Cities, " approved and in force March 20, 1895, which it is sought by said petition to enforce, is null and void, the same being in violation of certain provisions of the Constitution of the State of Illinois and also of certain other provisions of the Constitution of the United States of America, that is to say, for the following reasons:

1. It abridges the privileges and immunities of citizens of the United States, in that it renders all citizens who do not apply for office or for place of employment ineligible to appointment or for selection therefor, whereas it is the right and privilege of every citizen to hold office and serve the public.

2. The said act of March 20, 1895, deprives a duly elected and qualified officer of the right to select his subordinates and provide the requisite agencies for performing his official duties, thus abridging the rights, privileges and immunities belonging and guaranteed by the said constitutions respectively to every citizen thereof.

3. The said act of March 20, 1895, provides for the invasion of the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.

4. The said act of March 20, 1895, purports to prescribe substantially for the criminal trial of public officers for nonfeasance, for misfeasance, for malfeasance in

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office, and for the infliction of the penalties therefor, of deprivation of office, and incapacity to hold office thereafter, by a non-judicial body, and in such a manner that the accused shall not enjoy the right to a speedy and public trial by an impartial jury, of the state or district wherein the crime shall have been committed; and without informing the accused of nature and cause of accusation; and without confronting the accused with the witnesses against him; and without permitting the accused to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for the defense.

5. That said act denies to the citizen the freedom of political action, making it highly penal for the citizen to take part in party politics.

6. That said act of March 20, 1895, provides for the creation and maintenance of an office-holding class, at the expense of the people who are excluded therefrom, by the operation of the said act.

7. And generally said act of March 20, 1895, is directly in contravention of the right of that clause of the United States Constitution, which prescribes that:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person the equal protection of the laws."

8. And lastly, plaintiff in error avers that the said act of March 20, 1895, generally denominated the "Civil Service Act," is absolutely null and void, because the same purports to require the civil officers of the City of

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Chicago to undergo tests as qualification for office and public employment in addition to the requirement of Section 25 of Article 5 of said Constitution of the State of Illinois, not only in contravention thereof, but of the general principles of popular government, and because it provides for a political test for the said commissioners respectively therein named, and because, further, the same is in contravention of Section 22 of Article 4 of said constitution, as well as many other provisions of said state constitution, and of the Constitution of the United States.

Second. The Supreme Court of Illinois erred in refusing said Kipley leave to withdraw his plea *puis darrein continuance*, and for the same reasons as aforesaid.

Third. The Supreme Court of Illinois erred in refusing the said Kipley leave to amend his answer, and for the same reasons as aforesaid.

Fourth. The Supreme Court of Illinois erred in refusing said Kipley leave to file a supplemental answer, and for the same reasons as aforesaid.

Fifth. The Supreme Court of Illinois erred in denying the respondent's motion to quash the rule to answer and to discharge the respondents therefrom and to dismiss the proceedings, and for the same reasons as aforesaid.

Sixth. The Supreme Court of Illinois erred in granting the order of judgment of December 22, 1897, awarding the writ of mandamus as to the said record set forth, and for the same reasons as aforesaid.

Seventh. The Supreme Court of Illinois erred in denying the motion to vacate the said judgment of December 22, 1897, and to dismiss allthe proceedings in said

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cause, and for the same reasons as aforesaid.

Eighth. The Supreme Court of Illinois erred in denying the petition of the said Kipley for a rehearing in said cause on February 4, 1897.

Wherefore the said plaintiff in error doth ask this Honorable court, the premises being seen, that the said errors be corrected, and that the order or judgment of the Supreme Court of Illinois of December 22, 1897, of which he complains, be reversed, and that such other proceedings be had herein as to this Honorable court may seem meet and to justice may appertain.

CHAS. S. THORNTON,
Attorney for Plaintiff in Error.

And in so doing we would now present our brief prepared for the hearing on the merits, viz:

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

JOSEPH KIPLEY,
Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS
ex rel. AKIN, Attorney General,
Defendant in Error.

In Error to the Supreme Court of Illinois

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

The relator on June 5, 1897, with leave of court first had and obtained, filed his petition in the state Supreme court setting forth at length certain rules which had been adopted by the Commissioners under the civil-service act of Illinois on March 20, 1895 (which is hereinafter set forth), showing that the plaintiff in error was then the Superintendent of Police of the City of Chicago, and as such had neglected or refused to comply with said act and rules by not notifying the Commission of vacancies in the subordinate offices of the police department, known

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as assistant superintendent, the four inspectors, and the fifteen captains of police, and had not made requisition upon the Commission for certification of eligibles, so as to place these officers under the classified civil service as prescribed by the said act, and by filling such offices respectively by his own appointees. The relator sought a peremptory writ of mandamus against the plaintiff in error by which to enforce the law and the rules aforesaid. The court ruled the respondent to answer. (See Rec., 8–39.)

The plaintiff in error admitted in his answer that he had not given the notices, but had made the appointments regardless of the Commission, claiming, however, that under the ruling of the Commission and of the law department of the city and that according to the plain meaning of the statute the said officers respectively were not included in the classfied civil service of the city. (See Rec., 50–70.)

The plaintiff in error also set up in his answer the unconstitutionality of the act. (*Id.*, 51.)

The relator demurred to this answer (*Id.*, 71, 72) and the cause under the issue thereby joined was continued to the October term, whereupon the court was then adjourned in course for the June term. (*Id.*, 75.) On June 28, 1897, the city council passed an ordinance making all said officers principal heads of the police department so as to exempt them beyond all cavil from the jurisdiction of the Civil Service Commission. Plaintiff in error pleaded this ordinance in bar (*Id.*, 75–79), but immediately on the opening of the court at the next term asked leave to withdraw the plea and so amend his answer as to set up among other things specifically wherein the said act is in contravention of the Constitution of the United States, and the Constitution of the state of Illinois (*Id.*, 80–83) and for leave to plead this ordinance *de bene esse*, by way of a supplemental answer (*Id.*, 84,

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85); but the court denied all these motions (*Id.*, 86), setting the case for argument on the petition, the answer and the demurrer thereto.

Thereupon the plaintiff in error moved to quash the rule and dismiss the proceedings on the ground that as the act in question is in contravention of specified clauses and provisions of the state constitution respectively, as well as of certain specified clauses and provisions of the Constitution of the United States, respectively, the court was without jurisdiction in this case (*Id.*, 87–89); after denying this motion the court proceeded with the hearing (*Id.*, 89, 90), and on December 22, 1897, entered an order awarding the peremptory writ. (*Id.*, 140, 141.)

To this order or judgment the plaintiff in error has brought this writ of error. It is here sought to reverse this order or judgment on the ground that in thus enforcing the said civil service act the Supreme court of Illinois has transcended its jurisdiction, for the reason that the said act of March 20, 1895, being as is alleged and specified in contravention of the constitution of the United States, is null and void. Thus this act of the General Assembly of the state of Illinois is now brought before this court.

The act is as follows:

CIVIL SERVICE ACT.

AN ACT TO REGULATE THE CIVIL SERVICE OF CITIES.

APPROVED MARCH 20, 1895.

SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: *Commissioners appointed—Oath.* The mayor of each city in this state which shall adopt this act as hereinafter provided, shall, not less than forty nor more than ninety days after the taking effect of this act in such city, appoint three persons, who shall constitute and be known

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as the Civil Service Commissioners of such city, one for three years, one for two years and one for one year from the time of appointment and until their respective successors are appointed and qualified; and in every year thereafter the mayor shall, in like manner, appoint one person as the successor of the commissioner whose term shall expire in that year to serve as such commissioner for three years and until his successor is appointed and qualified. Two commissioners shall constitute a quorum. All appointments to said commission, both original and to fill vacancies, shall be so made that not more than two members shall, at the time of appointment, be members of the same political party. Said commissioners shall hold no other lucrative office or employment under the United States, the State of Illinois, or any municipal corporation or political division thereof. Each commissioner, before entering upon the duties of his office, shall take the oath prescribed by the constitution of this state.

SEC. 2. *Removal of commissioners—Vacancy.* The mayor may, in his discretion, remove any commissioner for incompetence, neglect of duty or malfeasance in office. The mayor shall within ten days report in writing any such removal to the city council, with his reasons therefor. Any vacancy in the office of commissioner shall be filled by appointment by the mayor.

SEC. 3. *Classification.* Said commissioners shall classify all the offices and places of employment in such city, with reference to the examinations hereinafter provided for, except those offices and places mentioned in section 11 of this act. The offices and places so classified by the Commission shall constitute the classified civil service of such city; and no appointments to any of such offices or places shall be made except under and according to the rules hereinafter mentioned.

SEC. 4. *Rules.* Said Commission shall make rules to carry out the purposes of this act, and for examinations, appointments and removals in accordance with its provisions, and the Commission may, from time to time, make changes in the original rules.

SEC. 5. *Publication of rules. Time of taking effect.* All rules made as hereinbefore provided, and all

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changes therein, shall forthwith be printed for distribution by said Commission; and the Commission shall give notice of the place or places where said rules may be obtained by publication in one or more daily newspapers, published in such city, and in each such publication shall be specified the date, not less than ten days subsequent to the date of such publication, when said rules shall go into operation.

SEC. 6. *Examinations.* All applicants for offices or places in said classified service, except those mentioned in section 11, shall be subjected to examination, which shall be public, competitive and free to all citizens of the United States, with specified limitations as to residence, age, health, habits and moral character. Such examinations shall be practical in their character, and shall relate to those matters which will fairly test the relative capacity of the persons examined to discharge the duties of the positions to which they seek to be appointed, and shall include tests of physical qualifications and health, and when appropriate, of manual skill. No questions in any examination shall relate to political or religious opinions or affiliations. The Commission shall control all examinations, and may, whenever an examination is to take place designate a suitable number of persons, either in or not in the official service of the city, to be examiners, and it shall be the duty of such examiners, and, if in the official service, it shall be a part of their official duty, without extra compensation, to conduct such examination as the Commission may direct, and to make return or report thereof to said Commission, and the Commission may at any time substitute any other person, whether or not in such service, in the place of any one so selected; and the Commission may themselves at any time act as such examiners, and without appointing examiners. The examiners at any examination shall not all be members of the same political party.

SEC. 7. *Notice of examinations.* Notice of the time and place and general scope of every examination shall be given by the Commission by publication for two weeks preceding such examination in a daily newspaper of general circulation published in such city, and such notice shall also be posted by said Commission in a con-

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spicuous place in their office for two weeks before such examination. Such further notice of examinations may be given as the Commission shall prescribe.

SEC. 8. *Registers.* From the returns or reports of the examiners, or from the examinations made by the Commission, the Commission shall prepare a register for each grade or class of positions in the classified service of such city of the persons whose general average standing upon examination for such grade or class is not less than the minimum fixed by the rules of such Commission, and who are otherwise eligible; and such persons shall take rank upon the register as candidates in the order of their relative excellence as determined by examination, without reference to priority of time of examination.

SEC. 9. *Promotions.* The Commission shall, by its rules, provide for promotions in such classified service, on the basis of ascertained merit and seniority in service and examination, and shall provide, in all cases where it is practicable, that vacancies shall be filled by promotion. All examinations for promotion shall be competitive among such members of the next lower rank as desire to submit themselves to such examinations; and it shall be the duty of the Commission to submit to the appointing power the names of not more than three applicants for each promotion having the highest rating. The method of examination, and the rules governing the same and the method of certifying, shall be the same as provided for applicants for original appointment.

SEC. 10. *Appointments to classified service.* The head of the department or office in which a position classified under this act is to be filled shall notify said Commission of that fact, and said Commission shall certify to the appointing officer the name and address of the candidate standing highest upon the register for the class or grade to which said position belongs, except that, in cases of laborers where a choice by competition is impracticable, said Commission may provide by its rules that the selections shall be made by lot from among those candidates proved fit by examination. In making such certification sex shall be disregarded, except when some statute, the rules of said Commission or the appointing power specifies sex. The appointing officer shall notify

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said Commission of each position to be filled separately, and shall fill such place by the appointment of the person certified to him by said Commission therefor, which appointment shall be on probation for a period to be fixed by said rules. Said Commission may strike off names of candidates from the register after they have remained thereon more than two years. At or before the expiration of the period of probation the head of the department or office in which a candidate is employed may, by and with the consent of said Commission, discharge him upon assigning in writing his reason therefor to said Commission. If he is not then discharged his appointment shall be deemed complete. To prevent the stoppage of public business, or to meet extraordinary exigencies, the head of any department or office may, with the approval of the Commission, make temporary appointment to remain in force not exceeding sixty days, and only until regular appointments under the provisions of this act can be made.

SEC. 11. *Officers excepted from classified service.* Officers who are elected by the people, or who are elected by the city council pursuant to the city charter, or whose appointment is subject to confirmation by the city council, judges and clerks of election, members of any board of education, the superintendent and teachers of schools, heads of any principal department of the city, members of the law department, and one private secretary of the mayor, shall not be included in such classified service.

SEC. 12. *Removals.* No officer or employe in the classified civil service of any city who shall have been appointed under said rules and after said examination, shall be removed or discharged except for cause, upon written charges and after an opportunity to be heard in his own defense. Such charges shall be investigated by or before said Civil Service Commission, or by or before some officer or board appointed by said Commission, to conduct such investigation. The finding and decision of such Commission or investigating officer or board, when approved by said Commission, shall be certified to the appointing officer, and shall be forthwith enforced by such officer. Nothing in this act shall limit the power of

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any officer to suspend a subordinate for a reasonable period, not exceeding thirty days. In the course of an investigation of charges each member of the Commission, and of any board so appointed by it, and any officer so appointed, shall have the power to administer oaths and shall have power to secure by its subpœna both the attendance and testimony of witnesses, and the production of books and papers relevant to such investigation. Nothing in this section shall be construed to require such charges or investigation in cases of laborers or persons having the custody of public money, for the safe keeping of which another person has given bonds.

SEC 13. *Reports to Commission.* Immediate notice in writing shall be given by the appointing power, to said Commission, and all appointments, permanent or temporary, made in such classified civil service, and all transfers, promotions, resignations, or vacancies from any cause in such service, and of the date thereof, and a record of the same shall be kept by said Commission. When any office or place of employment is created or abolished, or the compensation attached thereto altered, the officer or board making such change shall immediately report it in writing to said Commission.

SEC. 14. *Investigations.* The Commission shall investigate the enforcement of this act and of its rules, and the action of the examiners herein provided for, and the conduct and action of the appointees in the classified service in its city, and may enquire as to the nature, tenure and compensation of all offices and places in the public service thereof. In the course of such investigations each commissioner shall have power to administer oaths, and said Commission shall have power to secure by its subpœna both the attendance and testimony of witnesses and the production of books and papers relevant to such investigation.

SEC. 15. *Report by Commission.* Said Commission shall, on or before the fifteenth day of January of each year, make to the mayor for transmission to the city council a report showing its own action, the rules in force, the practical effects thereof, and any suggestions it may approve for the more effectual accomplishments of the purposes of this act. The mayor may require a report from said Commission at any other time.

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SEC. 16. *Chief examiner.* Said Commission shall employ a chief examiner, whose duty it shall be, under the direction of the Commission, to superintend any examination held in such city under this act, and who shall perform such other duties as the Commission shall prescribe. The chief examiner shall be *ex officio* secretary of said Commission, under the direction of such Commission; he, as such secretary, shall keep the minutes of its proceedings, preserve all reports made to it, keep a record of all examinations held under its direction, and perform such other duties as the Commission shall prescribe.

SEC. 17. *Officers to aid—Rooms.* All officers of any city which shall have adopted this act shall aid said Commission in all proper ways in carrying out the provisions of this act, and at any place where examinations are to be held, shall allow reasonable use of public buildings for holding such examinations. The mayor of such city shall cause suitable rooms to be provided for said Commission at the expense of such city.

SEC. 18. *Salaries and expenses.* In cities having a population of one hundred thousand inhabitants, or more, each of said commissioners shall receive a salary of three thousand dollars a year; the chief examiner shall receive a salary of three thousand dollars a year. Any person not at the time in the official service of the city, serving as a member of the board of examiners or of a trial board, shall receive compensation for every day actually and necessarily spent in the discharge of his duty as an examiner or a member of the trial board, at the rate of five dollars per day, and said Commission may, in such city, also incur expenses not exceeding five thousand dollars per year, for clerk hire, printing, stationery, and other incidental matters.

In cities having a population of fifty thousand inhabitants and less than one hundred thousand such commissioners shall receive an annual salary of one thousand five hundred dollars each; the chief examiner shall receive an annual salary of one thousand five hundred dollars. Any person not at the time in the official service of the city, serving as a member of the board of examiners, or of a trial board, shall receive compensation for

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every day actually and necessarily spent in the discharge of his duty as an examiner or member of the trial board, at the rate of three dollars per day, and said Commission may, in such city, also incur expenses not exceeding three thousand dollars a year, for clerk hire, printing, stationery, and other incidental matters.

In cities having a population of twenty-five thousand and less than fifty thousand inhabitants, such commissioners shall receive an annual salary of one thousand dollars each, and the chief examiner shall receive an annual salary of one thousand dollars.

In cities having a population of less than twenty-five thousand inhabitants, such commissioners shall receive an annual salary to be fixed by the city council of such cities not to exceed five hundred dollars each; the chief examiner shall receive an annual salary to be fixed by the city council of such cities not to exceed five hundred dollars. In cities having a population of less than fifty thousand inhabitants any person, not at the time in the official service of the city, serving as a member of the board of examiners, or of a trial board, shall receive compensation for every day actually and necessarily spent in the discharge of his duty as an examiner or member of the trial board, at the rate of two dollars per day, and said Commission may, in such city, also incur expenses not exceeding two thousand dollars per year, for clerk hire, printing, stationery, and other incidental matters.

SEC. 19. *Appropriations.* A sufficient sum of money shall be appropriated each year by each city which shall adopt this act, to carry out the provisions of this act in such city. In such cities as shall have already made the annual appropriation for municipal purposes for the current fiscal year, the mayor is authorized and required to pay the salaries and expenses as herein provided for such fiscal year out of the moneys appropriated for contingent purposes by such municipality, or out of any moneys not otherwise appropriated.

SEC. 20. *Frauds prohibited.* No person or officer shall wilfully or corruptly by himself or in co-operation with one or more other persons, defeat, deceive, or obstruct any person in respect to his or her right of exam-

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ination, or corruptly or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined hereunder or aid in so doing, or wilfully or corruptly make any false representation concerning the same, or concerning the person examined, or wilfully or corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined or to be examined, being appointed, employed or promoted.

SEC. 21. *No officer to solicit or receive political contributions.* No officer or employe of such city shall solicit, orally or by letter, or receive or pay, or be in any manner concerned in soliciting, receiving or paying, any assessment, subscription or contribution for any party or political purpose whatever.

SEC. 22. *No person to solicit political contributions from officers or employes.* No person shall solicit, orally or by letter, or be in any manner concerned in soliciting any assessment, contribution or payment, for any party or any political purpose whatever, from any officer or employe in any department of the city government of any city which shall adopt this act.

SEC. 23. *Assessments and contributions in public offices forbidden.* No person shall in any room or building occupied for the discharge of official duties by any officer or employe in any city which shall adopt this act, solicit, orally or by written communication, delivered therein, or in any other manner, or receive any contribution of money or other thing of value, for any party or political purpose whatever. No officer, agent, clerk or employe under the government of such city, who may have charge or control of any building, office or room, occupied for any purpose of said government, shall permit any person to enter the same for the purpose of therein soliciting or delivering written solicitations for receiving or giving notice of any political assessments.

SEC. 24. *Payments of political assessments to public officers prohibited.* No officer or employe in the service of such city shall, directly or indirectly, give or hand over to any officer or employe in said service, or to any senator or representative or alderman, councilman or

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commissioner, any money or other valuable thing on account of or to be applied to the promotion of any party or political object whatever.

SEC. 25. *Abuse of official influence prohibited.* No officer or employe of such city shall discharge or degrade or promote, or in any manner change the official rank or compensation of any other officer or employe, or promise or threaten to do so for giving or withholding or neglecting to make any contribution of money or other valuable thing for any party or political purpose or for refusal or neglect to render any party or political service.

SEC. 26. *Payment for places prohibited.* No applicant for appointment in said classified civil service, either directly or indirectly, shall pay, or promise to pay any money or other valuable thing to any person whatever for or on account of his appointment, or proposed appointment and no officer or employe shall pay or promise to pay, either directly or indirectly, any person any money or other valuable thing whatever for or on account of his promotion.

SEC. 27. *Recommendations in consideration of political service prohibited.* No applicant for appointment or promotion in said classified civil service shall ask for or receive a recommendation or assistance from any officer or employe in said service, or of any person upon the consideration of any political service to be rendered to or for such person or for the promotion of such person to any office of appointment.

SEC. 28. *Abuse of political influence prohibited.* No person while holding any office in the government of such city, or nomination for, or while seeking a nomination for, or appointment to any such office, shall corruptly use or promise to use, either directly or indirectly, any official authority or influence (whether then possessed or merely anticipated) in the way of conferring upon any person, or in order to secure or aid any person in securing any office or public employment, or any nomination, confirmation, promotion or increase of salary upon the consideration or condition that the vote or political influence or action of the last named person or any other shall be given or used in behalf of any candidate, officer or party, or upon any other corrupt condition or consideration.

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SEC. 29. *Auditing officer.* No accounting or auditing officer shall allow the claim of any public officer for services of any deputy or other person employed in the public service in violation of the provisions of this act.

SEC. 30. *Appointments and removals to be certified to the comptroller.* The Commission shall certify to the comptroller or other auditing officers, all appointments to offices and places in the classified civil service, and all vacancies occurring therein, whether by dismissal or resignation or death, and all findings made or approved by the commission under the provisions of section 12 of this act, that a person shall be discharged from the classified civil service.

SEC. 31. *Comptroller to pay Salaries only after certification.* No comptroller or other auditing officer of a city which has adopted this act shall approve the payment of, or be in any manner concerned in paying any salary or wages to any person for services as an officer or employe of such city, unless such person is occupying an office or place of employment according to the provisions of law and is entitled to payment therefor.

SEC. 32. *Paymasters, etc., to pay salaries only after certification.* No paymaster, treasurer, or other officer or agent of a city which has adopted this act shall wilfully pay, or be in any manner concerned in paying any person any salary or wages for services as an officer or employe of such city, unless such person is occupying an office or place of employment according to the provisions of law and is entitled to payment therefor.

SEC. 33. *Compelling testimony of witnesses. Production of books and papers.* Any person who shall be served with a subpœna to appear and testify, or to produce books and papers, issued by the Commission or by any commissioner or by any board or person acting under the orders of the Commission in the course of an investigation conducted either under the provisions of section 12 or section 14 of this act, and who shall refuse or neglect to appear or to testify, or to produce books and papers relevant to said investigation, as commanded in such subpœna, shall be guilty of a misdemeanor, and shall on conviction, be punished as provided in section 34 of this act. The fees of witnesses for at-

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tendance and travel shall be the same as the fees of witnesses before the circuit courts of this state, and shall be paid from the appropriation for the expenses of the Commission. Any circuit court of this state, or any judge thereof, either in term time or vacation, upon application of any such commissioner, or officer or board, may in his discretion compel the attendance of witnesses, the production of books and papers, and giving of testimony before the Commission, or before any such commissioner, investigating board or officer, by attachment for contempt or otherwise, in the same manner as the production of evidence may be compelled before said court. Every person who, having taken an oath or made affirmation before a commissioner or officer appointed by the Commission authorized to administer oaths shall swear or affirm wilfullfully, corruptly and falsely shall be guilty of perjury, and upon conviction shall be punished accordingly.

SEC. 34. *Penalties.* Any person who shall wilfully, or through culpable negligence violate any of the provisions of this act, or any rule promulgated in accordance with the provisions thereof, shall be guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine of not less than fifty dollars and not exceeding one thousand dollars, or by imprisonment in the county jail for a term not exceeding six months, or both such fine and imprisonment in the discretion of the court.

SEC. 35. *Penalties—Disqualification to hold office.* If any person shall be convicted under the next preceding section, any public office or place of public employment, which such person may hold shall by force of such conviction be rendered vacant and such person shall be incapable of holding any office or place of public employment for the period of five years from the date of such conviction.

SEC. 36. *What officers to prosecute.* Prosecutions for violations of this act may be instituted either by the attorney general state's attorney for the county in which the offence is alleged to have been committed, or by the Commission, acting through special counsel. Such suits shall be conducted and controlled by the prosecuting officers who institute them, unless they request the aid of other prosecuting officers

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SEC. 37. *Repeal.* All laws or parts of laws which are inconsistent with this act, or any of the provisions thereof, are hereby repealed.

SEC. 38. *Adoption.* The electors of any city now existing or hereafter existing in this state, may adopt and become entitled to the benefit of this act in the following manner: Whenever one thousand of the legal voters of such city, voting at the last preceding election shall petition the judge of the county court of the county, in which such city is located, to submit to a vote of the electors of such city the proposition as to whether such city and the electors thereof shall adopt and become entitled to the benefits of this act, it shall be the duty of such county court to submit such proposition accordingly at the next succeeding general state, county or city election, and if such proposition is not adopted at such election the same shall in a like manner be submitted to a vote of the electors of such city by such county court upon like application at any general state, county or city election, thereafter, and an order shall be entered of record in such county court submitting such proposition as aforesaid.

If one thousand shall exceed one-eighth of the legal voters of any such city voting at the last preceding election, then such petition or application need not be signed or made by more than one-eighth of the legal voters of such city voting at the last preceding election.

SEC. 39. *Notice of election.* The judge of such county court shall give at least ten days notice of the election at which such proposition is to be submitted by publishing such notice in one or more newspapers published within such city for at least five times, the first publication to be at least ten days before the day of the election; and if no newspaper is published in such city, then by posting at least five copies of such notice in each ward at least ten days before such election. Such election shall be held under the election law in force in such city, except as herein otherwise provided. The proposition so to be voted for shall appear in plain, prominent type at head of every ticket and preceding the names of persons to be voted upon for any office at such election. If a majority of the votes cast upon such

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proposition shall be for such proposition, this act shall thereby be adopted by such city, and the mayor shall thereupon issue a proclamation declaring this act in force in such city.

SEC. 40. *Emergency.* Whereas, an emergency exists for the immediate taking effect of this act, therefore it shall be in force from and after its passage.

PROCLAMATION BY THE MAYOR.

Whereas, Under the provisions of an Act of the General Assembly of the State of Illinois, entitled "An Act to Regulate the Civil Service of Cities," approved and in force March 20, 1895, there was duly submitted to a vote of the electors of the City of Chicago at the general city election held April 2, 1895, the proposition whether said city and its electors should adopt and become entitled to the benefits of said act; and

Whereas, A large majority of the votes cast at such election were cast for such proposition, and in favor of the adoption of said act; now, therefore, as required by said act, I, George B. Swift, Mayor of the City of Chicago, hereby declare that said act is in full force and effect in the City of Chicago from and after this date, and that in accordance with the provisions thereof, I have this day appointed as the three Civil Service Commissioners, under said act, John M. Clark, for the term of three years; Robert A. Waller, for a term of two years; and Christoph Hotz,* for a term of one year.

Dated, July 1, 1895. GEORGE B. SWIFT,
Mayor.

*On June 29, 1896, Christoph Hotz was appointed by the mayor to succeed himself, as Commissioner, for the term of three years, from July 1, 1896. On the accession of Mr. Harrison as mayor Mr. Waller resigned, and the mayor removed Messrs. Clark and Hotz, and appointed Adolf Kraus, Hempstead Washburne and Dudley Winston; who were the Commissioners as alleged in the petition.

An act to amend an act entitled "An act to regulate the civil service in cities." Approved March 20, 1895.

SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That an act entitled "An act to regulate the civil service in cities," be amended by the addition of a section to be known as section 10½, which section shall read as follows:

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SEC. 10½. Persons who were engaged in the military or naval service of the United States during the years 1861, 1862, 1863, 1864 or 1865, and who were honorably discharged therefrom, shall be preferred for appointments to civil offices, provided they are found to possess the business capacity necessary for the proper discharge of the duties of such office, and it shall be the duty of the examiner or commissioners certifying the list of eligibles who have taken the examinations provided for in this act, to place the name or names of such persons at the head of the list of eligibles certified for appointment.

Approved May 6, 1897.

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ASSIGNMENT OF ERRORS.

And now comes Joseph Kipley, the plaintiff in error above named, by Charles S. Thornton, his attorney, and shows unto the Court that in the record of the Supreme court of the state of Illinois, in that certain cause wherein the People of the state of Illinois, on the relation of Edward C. Akin, attorney general, ask for a writ of mandamus against Joseph Kipley, superintendent of police of the city of Chicago, and Adolph Kraus, Hempstead Washburne and Dudley Winston, civil service commissioners, which writ was awarded by order of said Supreme court of Illinois, of date December 22, 1897; from which order the said Kipley, plaintiff in error, has sued out of the Supreme court of the United States a writ of error:

There is manifest error in this:

First. The Supreme court of Illinois erred in granting leave to the relator to file his petition therein and in ruling the respondents to answer the same.

Because that certain act of the General Assembly of the state of Illinois entitled "An act to regulate the civil service of cities," approved and in force March 20, 1895, which it is sought by said petition to enforce, is null and void, the same being in violation of certain provisions of the Constitution of the state of Illinois and also of certain other provisions of the Constitution of the United States of America; that is to say, for the following reasons:

1. It abridges the privileges and immunities of citizens of the United States, in that it renders all citizens who do not apply for office or for place of employment ineligible to appointment or for selection therefor, whereas it is the

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right and privilege of every citizen to hold office and serve the public.

2. The said act of March 20, 1895, deprives a duly elected and qualified officer of the right to select his subordinates and provide the requisite agencies for performing his official duties, thus abridging the rights, privileges and immunities belonging and guaranteed by the said Constitutions respectively to every citizen thereof.

3. The said act of March 20, 1895, provides for the invasion of the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.

4. The said act of March 20, 1895, purports to prescribe substantially for the criminal trial of public officers for nonfeasance, for misfeasance for malfeasance in office, and for the infliction of the penalties therefor, of deprivation of office, and incapacity to hold office thereafter, by a non-judicial body, and in such a manner that the accused shall not enjoy the right to a speedy and public trial by an impartial jury, of the state or district wherein the crime shall have been committed; and without informing the accused of nature and cause of accusation; and without confronting the accused with the witnesses against him; and without permitting the accused to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for the defense.

5. That said act denies to the citizen the freedom of political action, making it highly penal for the citizen to take part in party politics.

6. That said act of March 20, 1895, provides for the creation and maintenance of an office-holding class, at

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the expense of the people who are excluded therefrom, by the operation of the said act.

7. And generally said act of March 20, 1895, is directly in contravention of the right of that clause of the United States Constitution, which prescribes that

"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person the equal protection of the laws."

8. And lastly, plaintiff in error avers that the said act of March 20, 1895, generally denominated the "Civil Service Act," is absolutely null and void, because the same purports to require the civil officers of the city of Chicago to undergo tests as qualification for office and public employment in addition to the requirement of Section 25 of Article 5 of said Constitution of the state of Illinois, not only in contravention thereof, but of the general principles of popular government, and because it provides for a political test for the said Commissioners respectively therein named, and because, further, the same is in contravention of Section 22 of Article 4 of said constitution, as well as many other provisions of said state Constitution, and of the Constitution of the United States.

Second. The Supreme court of Illinois erred in refusing said Kipley leave to withdraw his plea *puis darrein continuance*, and for the same reasons as aforesaid.

Third. The Supreme court of Illinois erred in refusing the said Kipley leave to amend his answer, and for the same reasons as aforesaid.

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Fourth. The Supreme court of Illinois erred in refusing said Kipley leave to file a supplemental answer, and for the same reasons as aforesaid.

Fifth. The Supreme court of Illinois erred in denying the respondent's motion to quash the rule to answer and to discharge the respondents therefrom and to dismiss the proceedings; and for the same reasons as aforesaid.

Sixth. The Supreme court of Illinois erred in granting the order or judgment of December 22, 1897, awarding the writ of mandamus as in the said record set forth; and for the same reasons as aforesaid.

Wherefore the said plaintiff in error doth ask this Honorable court, the premises being seen, that the said errors be corrected, and that the order or judgment of the Supreme court of Illinois of December 22, 1897, of which he complains, be reversed, and that such other proceedings be had herein as to this Honorable court may seem meet and to justice may appertain.

CHAS. S. THORNTON,
Attorney for Plaintiff in Error.

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BRIEF.

That certain act of the General Assembly of the State of Illinois entitled "An Act to regulate the Civil Service of Cities" approved and in force March 20, 1895, is unconstitutional and void for the following reasons:

POINTS.

I.

It abridges the privileges and immunities of citizens of the United States, in that it renders all citizens who do not apply for office or for place of employment ineligible to appointment or for selection therefor, whereas it is the right and privilege of every citizen to hold office and his corresponding duty to serve the public.

Chi., B. & Q. R. R. Co. v. *Chicago*, 166 U. S., 226.

1. Applicants, alone, can be examined and thus made eligible. These must of necessity constitute a very small minority; hence the majority is rendered ineligible by this Civil Service Act.

By § 6 (p. 13, *supra*), this act provides that applicants shall be subjected to examination; that the examination shall be public; that it shall be free, with certain limitations (but this does not make it open to those who do not apply); that it shall be competitive, that is that those who succeed in establishing their eligibility by meeting the tests prescribed by the rules to be made by the commission shall compete for "the positions to which they "seek to be appointed" among themselves and by means

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of such competition only secure appointment to office or place of employment. Applicants may thus become eligible; eligibles may thus become competitors; the successful competitors, may thus respectively secure an office or place of employment. Thus this act provides the machinery, which deprives the local officers of all power not only of appointment but of amotion or removal. Where does this power of appointment reside under this act? The commissioners, who are to classify, to make the rules, to examine and to test "applicants, office seekers, place hunters" only, are required to certify the eligible, that certain competitor who stands "highest"; and the hitherto appointing power is to designate this competitor for the place or office which is to be filled. This act thus takes away the liberty and equality which appertain to citizenship.

2. Merit and fitness, thus ascertained, by competition are made the sole *criteria;* competitive skill prevails and is thus made to supersede; choice by the people, or by those representing the people thus becomes an impossibility. Character, the true criterion of individual merit and fitness is of little or no avail. Experience in the administration of individual concern as well as of public affairs has no weight. Industry and integrity cease to be requisite. Honors are disregarded.

3. By Section 12, the right of amotion or power of removal is taken away except for cause, which is in every instance to be ascertained by investigation "upon "written charges and after an opportunity to be heard" in the officer's own defense. This is practically a life tenure. This completes the machinery for the applicant to get into office and to permanently fix him there. The prescribed examination made necessary to eligibility

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opens the door it is true to all who apply; but before the passage of the act all citizens were equal before the law, all were eligible; now by reason of this law all at once are made ineligible, for to become eligible the aspirant must make application under the rules.

Mr. Justice BRADLEY, in speaking of the offices appertaining to the Federal Government, says:

"The offices of the government do not belong to the legislative department to dispose of on any conditions it may choose to impose. The Legislature creates most of the offices it is true, and provides compensation for the discharge of their duties; but that is its duty to do, in order to establish a complete organization of the functions of government. When established, the offices are, or ought to be, open to all. They belong to the United States and not to Congress; and every citizen having the proper qualifications has a right to accept office, and to be a candidate therefor. This is a fundamental right of which the Legislature can not deprive the citizen, nor clog its exercise with conditions that are repugnant to his other fundamental rights."

Ex parte Curtis, 106 U. S., 376.

Per Justice SANFORD:

"The constitution giving the right of election and the right of appointment, these rights consisting essentially in the freedom of choice, and the constitution also declaring that certain persons are not eligible to office, it follows from these powers and provisions that all other persons are eligible. Eligibility to office is not declared as a right or principle by any express terms of the constitution, but it resules as a just deduction from the express powers and provisions of the system. The basis of the principle is the absolute liberty of the electors and the appointing authorities to choose and to appoint any person who is not made ineligible by the constitution. Eligibilty to office, therefore, belongs not exclusively or specialy to electors enjoying the right of suffrage. It belongs equally to all persons whomsoever not excluded by the constitution. I, therefore, conceive it to be en-

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tirely clear that the Legislature can not establish arbitrary exclusions from office, or any general regulation requiring qualifications which the constitution has not required."

The learned chancellor thus continues:

"If, for example, it should be enacted by law, that all physicians, or all persons of a particular religious sect, should be ineligible to public trusts; or that all persons not possessing a certain amount of property, should be excluded; or that a member of the assembly must be a freeholder; any such regulation would be an infringement of the constitution; and it would be so, because, should it prevail, it would be in effect, an alteration of the constitution itself."

Barker v. *The People*, 3 Cowen, pp. 703, 704.

In speaking of the New York Civil Service Act, Chief Justice RUGER says:

"The vice of this legislation is that it is directed at the appointing power alone and enjoins it from the exercise of that power except under conditions and restrictions imposed by the legislative will."

The People ex rel. Killeen v. *Angle*, 109 N. Y., 564.

The Illinois act before us goes further and creates the machinery by which the power of appointment to public office is placed in the hands of a few who are required to compete for the same as we have above stated.

The chief corner stone of all our institutions is majority rule. The will of the majority legitimately expressed must be carried out. In the language of Mr. Justice MAGRUDER:

"An election is an expression of the popular will, which necessarily has two sides to it. At every election there are those who vote for some candidate or measure, and there are those who vote against such can-

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didate or measure. In republican governments men arrange themselves into these two classes according to their political views and their party preferences."

The People v. *Hoffman*, 116 Ill., p. 607.

In the City of Chicago, with a population of nearly two millions, more than three hundred thousand people are doubtless by the Constitution and other laws of the State of Illinois, eligible to any place of public preferment from the Mayor to patrolman, from councillor to page, or messenger. Can three hundred thousand people, thus eligible, apply to the Civil Service Commission, created by the said act, to be tested by its rules? Is it possible for such commission to provide for the examination of all who are eligible for public office or place of public employment? We insist that citizenship carries with it, not only the right to vote, but also the right to be voted for or to be appointed to a position in the civil service of the city, the town, the village, the county, the state or the nation, and that any law which compels or requires the citizen, having such right, to submit himself for examination as an office seeker to such test in this respect abridges his highest rights, privileges and immunities.

We contend further that this act divides practically all the persons in Chicago who were eligible to public office and places of public employment, into three classes, namely,

First. Into those who do not submit themselves to examination, who are absolutely precluded by the act from holding any office or place of public employment to be filled by appointment.

Second. Into the civil officers who are elected by the

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people or who are elected by the City Council pursuant to the city charter or whose appointment is subject to confirmation by the City Council, judges and clerks of election, members of any board of education, superintendent and teachers of schools, heads of any principal department of the city, members of the law department and one private secretary of the Mayor who are by Sections 3 and 11 of said act, not only excepted but precluded therefrom.

Third. All other officers and employes of the city not included within the terms of Section 11 of said act.

And that such classification is the result of an arbitrary mandate which cannot be considered, in any view of the case, as legitimate legislation.

In *Millett* v. *The People*, 117 Ill., 294, the question was presented:

"Whether it is competent for the General Assembly to single out owners and operators of coal mines as a distinct class, and provide that they shall bear burdens not imposed on other owners of property or employers of laborers, and prohibit them from making contracts which it is competent for other owners of property or employers of laborers to make."

In considering this question Mr. Justice SCHOLFIELD in delivering opinion of the court says:

"It is declared in Section 2, Article 2, of our constitution, that 'no person shall be deprived of life, liberty or property without due process of law.' And Section 12 of the same article provides that private property shall not be taken or damaged for public use without just compensation The words, 'due process of law,' in this connection are held to be synonymous with the words 'the law of the land.' Cooley on Const. Lim. (1st Ed.), pp. 352–3. And this means general public law, binding upon all the members of the commu-

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nity, under all circumstances, and not partial or private laws, affecting the rights of private individuals or classes of individuals. *Jones* v. *Reynolds*, 2 Tex., 251. See, also, *Wyenheimer* v. *The People*, 13 N. Y., 432; *Vanzandt* v. *Waddell*, 2 Yerger, 269."

"Every one," says Cooley (Const. Lim. 1st Ed., p. 391, "has a right to demand that he be governed by general rules, and a special statute that singles his case out as one to be regulated by a different law from that which is applied in all similar cases would not be legitimate, but an arbitrary mandate, unrecognized in free government. Mr. Locke has said of those who make the laws: 'They are to govern by promulgated, established laws, not to be varied in particular cases, but to have one rule for rich and poor—for the favorite at court and the countryman at plough.' And this may justly be said to have become a maxim in the law by which may be tested the authority and binding force of legislative enactments."

And, again the same authority says (p. 393):

"The doubt might also arise whether a regulation made for any one class of citizen, entirely arbitrary in its character, and restricting their rights, privileges or legal capacities in a manner before unknown to the law, could be sustained. Distinction in these respects should be based upon some reason which renders them important—like the want of capacity in infants and insane persons; but if the Legislature should undertake to provide that persons following some specified lawful trade or employment should not have capacity to make contracts, or to receive conveyances, or to build such houses as others were allowed to erect, or in any other way to make such use of their property as was permissible to others, it can scarcely be doubted that the act would transcend the due bounds of legislative power, even if it did not come in conflict with express constitutional provisions. The man or the class forbidden the acquisition or enjoyment of property in the manner permitted to the community at large, would be deprived of liberty in particulars of primary importance to his or their pursuit of happiness."

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See, also, *Budd* v. *The State*, 3 Hump., 483, where one of the sections of the act incorporating the Union Bank, which provided that if any of the officers, agents or servants of that bank should embezzle the funds of the bank, or make false entries, they should be guilty of felony, was held unconstitutional, because it did not apply generally to officers, agents or servants of banks committing like offenses. And *Wally's Heirs* v. *Kennedy*, 2 Yerg., 554, where an act authorizing the court to dismiss Indian Reservation case where prosecuted for the use of another, was held unconstitutional. In the last case the court said:

"The rights of every individual must stand or fall by the same rule or law that governs every other member of the body politic, or land, under similar circumstances; and every partial or private law which directly proposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void. Were it otherwise, odious individuals or corporate bodies would be governed by one law, the mass of the community and those who made the law, by another; whereas a like general law, affecting the whole community equally, could not have passed."

On like principle is, also, *The People* v. *Marx*, 99 N. Y., 377.

See, also,

Frorer v. *The People*, 141 Ill., 171.

Braceville Coal Co. v. *The People*, 147 *id.*, 66.

Richie v. *The People*, 155 *id.*, 98.

Eden v. *The People*, 296 *id.*, 161.

The classification which the act itself makes can not be said to be based upon any sound reason or natural cause, but upon the arbitrary will of the Legislature. Mr. Binney says:

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"The underlying principle of general legislation is the same in all cases. A law applying to and embracing within its operation all persons or things which are in, or which may come into, like situations and circumstances, is general, no matter what the persons or things may be, either in character or in number. Laws in regard to railroads, mechanics' liens, landlords' liens, large cities, small cities, etc., all stand on the same ground in this respect."

Binney on Restrictions Upon Local and Special Legislation, pages 54, 55.

He further states the rules for classification which are supported by judicial decisions. Two of these rules, which are applicable in this discussion, are (page 59):

"1st. All classification must be based upon substantial distinctions which make one class really different from another.

"4th. To whatever class a law may apply it must apply equally to each member thereof, except only where its application is affected by the existence of prior unrepealed local or special laws."

The Supreme Court of New Jersey, in speaking of those substantial distinctions which make one class really different from another, used the following language:

"The true principle requires something more than a designation by such characteristics as will serve to classify, for the characteristics which thus serve as a basis of classification must be of such a nature as to mark the objects so designated as peculiarly requiring exclusive legislation. There must be a substantial distinction having a reference to the special matter of the proposed legislation between the objects or places embraced in such legislation and the objects or places excluded. The marks of distinction on which the classification is founded must be such, in the nature of things, as will, in some reasonable degree, at least, account for or justify the restrictions of the legislation."

State v. *Hammer*, 42 N. J. L., 436–440.

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Is the classification made by the Civil Service Act of Illinois, hereinbefore set forth, based upon substantial or natural reasons? The whole controversy here arises out of the difficulty in the construction of that portion of the act which attempts to prescribe the classification. The Civil Service Commission divide it into the unclassified service and the classified service.

(See Rec., 18.)

Sections 3 and 11 of the act, pages 4 and 7, *supra*, are those which prescribe for the classified service and the exceptions from the classified service, which the Civil Service Board classify into the unclassified service and the classified service. After thus taking out all the principal officers of the city who are elective or whose confirmation is required by the City Council, and others specified in Section 11, the "Heads of any principal department of the city," members of the law department and one private secretary to the Mayor, over which the Civil Service Board has no jurisdiction, and setting them aside, the said Civil Service Board by its rule prescribes as follows:

"The offices and places above named shall constitute the unclassified service."

This is "Rule 1" of the board.

(See Rec., 18.)

We ask what reason, substantial or natural can be given for this exclusion of all the principal officers of the City of Chicago from the rules, requirements and restrictions of this act? Suppose, for example, that the Mayor has two private secretaries; the one will be in the unclassified service, the other in the classified service. What reason substantial or natural

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would there be for making one secretary subject to examination and for leaving the other secretary free from all the provisions of the said act? And so may we one by one interrogate as to each and every one of the incumbents of the excluded offices specified in Section 11.

If any one word in the English language has a well defined meaning it is the word "heads." The controversy here arises out of the construction of this act as to the meaning of this word. The learned Judge who gives the dissenting opinion to be found in this record (See Rec., 134, 135) characterizes this act as being in necessity of preservatives. Judge BOGGS says:

"The rejection of a portion of an act is only to be resorted to as a desperate and heroic remedy necessary to to be employed for the preservation of the act itself."

He continues:

"It is a universal rule of construction so frequently declared that the citation of authorities is superfluous, that the words of a statute of common use are to be taken in their natural, plain, obvious and ordinary signification 'and that a plain common sense interpretation of such words are to be accepted rather than a refined and technical grammatical construction.'

"It must be conceded the meaning of the words 'heads of a department,' is not, in popular and common acceptation, at all a matter of doubt. It does not mean the 'head' alone of the department but the chief or principal governing officers thereof."

This was our construction of this act in this particular and we so in our official capacity advised the plaintiff in error in his official capacity, and in resisting the relator's application for a mandamus, the plaintiff in error also had the opinion of the Civil Service Commission itself, which body is by the act in terms authorized to prescribe the rules for carrying out the provisions thereof.

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But classification—the creating of an office-holding class, a class of eligibles who can as occasion demands call for the certification, the judgment, the decision of this body that they have merit and fitness which entitle them respectively as a vacancy or opening may occur, to fill it, and when once in, nothing but the certification of this same body that there is cause for removal, can oust them from their several positions, is by the act made the main duties of the Civil Service Commission.

See Section 3, page 12, *supra*.

But now comes the Supreme Court of the state, and in violation of all the rules of English grammar, changes the legislative classification as well as the classification of the board to which it has delegated the entire power of classification. Is it not plain that such an act bears not the semblance of legitimate legislation? Tell us if you can in reading this act from the enacting to the emergency clause, what officers, what employes of the City of Chicago are subject to the provisions of the act? Is it possible that the Legislature of a sovereign state can leave the whole subject-matter of an act of so great importance as that which purports to provide for an entire change of the civil service of its cities in regard to the appointment, the qualification and the removal of the public officers and the employes of such city to the discretion of a commission? Is it possible for such Legislature to clothe the said commission with power to make rules to carry out the purposes of the act, for examination, for appointments, and for removals and from time to time to make changes in such rules? Do such rules have the force and effect of statutes? In this record we have the Civil Service Rules which the Civil Service Commission of the City

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of Chicago have adopted. The relator attached copies thereof to his petition and now triumphantly brings them before this court as though they had the force and effect respectively of the said Civil Service Act.

See Rec., 18–39.

We insist that this act is absolutely null and void on its face; that it is not a law; that the whole subject matter thereof is left out of it; that the classified Civil Service of the City of Chicago cannot be found within it nor according to it. The act is like the play of Hamlet with Hamlet left out. Illustrative of our argument may we ask: Then, when you change the construction of this act which the legal department of the City of Chicago had placed upon it, which the Civil Service Commission had given to it, which the plaintiff in error had followed when he proceeded to regard his subordinates, the four inspectors, and the captains of police as respectively heads of his department, each having miles of territory, stations and Police Courts with hundreds of policemen in subordination, so as to include them within its provisions, do you not abridge the rights, privileges and immunities of such subordinates respectively?

The right of every policeman, the right of every individual to appointment and to promotion upon the police force of the city, existing without such act, is by the alteration of a letter in the act itself abridged, and thenceforward made subservient to the restrictions, requirements and the rules of the Civil Service Commission. Instead of a statute duly enacted by the General Assembly, approved and published as the law of the land, making a certain and well defined classification which all who read may understand, these policemen are com-

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pelled to resort to the shifting sands of the Civil Service Rules.

We now come to the prohibitory clause of Section 3, as follows: "And no appointments to any of such offices "or places shall be made except under and according to "the rules hereinafter mentioned."

Section 4 prescribes:

"Said Commission shall make rules to carry out the purposes of this act and for examination, appointments add removals in accordance with its provisions and the Commission may from time to time make changes in the original rules." *Id.*

It will thus be seen that the entire scope of the act is to rest the classification of the officers and employes of the city on the rules of a mere commission, which is empowed to make such rules for examination of all the office seekers in the city, for appointment to office and removals therefrom, with full power and authority to make changes in these rules from time to time in its discretion. But if such rules be laws they are within the inhibitory provisions of the Fourteenth Amendment to the United States Constitution.

Furthermore, it is the duty of every citizen whenever elected or appointed to office to accept the same and to serve the public to the best of his ability.

It is an offense at common law for a person chosen to a public office to refuse to serve.

Edwards v. *United States*, 103 U. S., 471.

A municipal corporation may impose a penalty for failure or refusal to serve.

City of London v. *Vanacker*, 1 Ld. Raym., 496.

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The person so refusing is also liable to criminal prosecution.

Rex v. *Lone*, 2 Str., 920.
Rex v. *Jones*, *Id.*, 1146.
Rex v. *Burder*, 4 T. R., 778.
Rex v. *Bower*, 1 B. & C., 585.
Rex v. *Whitwell*, 5 T. R., 85.

A public officer incurs the penalty by resignation.

Connor v. *Mayor*, 2 Sand., 355; per Sandford J., p. 371.

Mandamus will also lie to compel him to serve.

Rex v. *Mayor*, 4 Dougl., 14.
Rex v. *Layland*, 3 M. & S., 184.
Rex v. *Hungerford*, 11 Mod., 142.

It is the doctrine of the common law that every citizen, in peace as well as in war, owes his services to the state when demanded. This right stands on at least as high a necessity as the right of eminent domain.

London v. *Headon*, 76 N. C., 72.
State v. *McEntyre*, 3 Ired., 171.
Smith v. *Moore*, 90 Ind., 294.

That public office is a public trust; that the election or selection of an individual for the place of public trust is a privilege, no one can deny. It is the duty of every citizen to co-operate with his fellow citizens of his own choice in the promotion of his own political views and the carrying out of measures.

Says Mr. Justice BRADLEY:

"To take an interest in public affairs and to further promote those principles which are believed to be vital or important to the general welfare is every citizen's

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duty. It is a just complaint that so many good men abstain from taking such an interest."

106 U. S., page 376.

The theory of our government is that every citizen is a partner in the Republic; to exclude him from the privilege of bearing the burdens which office imposes, and enjoying the honors thereof, deprives him of inalienable rights which the Constitutions of the United States and the several states respectively guarantee.

II.

The said act of March 20, 1895, deprives a duly elected and qualified officer of the right to select his subordinates and provide the requisite agencies for performing his official duties, thus abridging the rights, privileges and immunities belonging and guaranteed by the said constitutions respectively to every citizen thereof.

Majority rule is the chief corner stone of all our institutions. The will of the majority legitimately expressed must be carried out. It is the guide in all political action. Thwart this will by Civil Service laws and Civil Service rules or otherwise and you contravene the far reaching and salutary provisions of the Fourteenth Amendment to the Constitution.

The rule adopted by General Washington is the correct one applicable and apposite here.

Words of Washington written in 1795 viz. (Spark's Washington, XI, 74):

"I shall not whilst I have the honor to administer the government bring a man into any office of consequence knowingly whose political tenets are adverse to the

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measures which the general government are pursuing; for this in my opinion would be a sort of political suicide."

Change this rule as it is changed by this Civil Service Act, and the fundamental rule of our Civil Government is gone; the rights of the majorities are abridged. Is it any the less political suicide for a Legislature, for a state to change this essential rule than for the chief magistrate of the nation to do so?

III.

The said act of March 20, 1895, provides for the invasion of the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.

We will consider this assignment of error under and together with Point VII, *infra*.

IV.

The said act of March 20, 1895, purports to prescribe substantially for the criminal trial of public officers for nonfeasance, for misfeasance, for malfeasance in office, and for the infliction of the penalties therefor, of deprivation of office and incapacity to hold office thereafter by a non-judicial body, and in such a manner that the accused shall not enjoy the right to a speedy and public trial by an impartial jury of the state or district wherein the crime shall have been committed; and without informing the accused of nature and cause of accusation; and without confronting the accused with the witnesses against him; and without permitting the accused to have

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compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for the defense.

We shall consider this assignment of error under and together with point VII, *infra*.

V.

That said act denies the freedom of political action, making it highly penal for the citizen to take part in party politics.

Sections 21, 22, 23 and 24, respectively (see pages 19 and 20, *supra*), tested by the decision of this court in *ex parte Curtis* are plainly within the restrictions so clearly stated by Mr. Justice BRADLEY in that case. The Civil Service Act of Illinois is more than a regulation for public officers and between themselves it absolutely prohibits any officer or employe of the city from paying as well as soliciting or receiving political contributions; and it also prohibits any person from soliciting from any officer or employe of the city any contributions for political purposes. The opinion of Mr. Justice BRADLEY is so in point here that we shall repeat it after reproducing the said sections:

"Section 21. *No officer to solicit or receive political contributions.* No officer or employe of such city shall solicit orally or by letter, or receive or pay, or be in any manner concerned in soliciting, receiving or paying any assessment, subscription or contribution for any party or political purpose whatever."

"Section 22. *No person to solicit political contributions from officers or employes.* No person shall solicit, orally or by letter, or be in any manner concerned in soliciting any assessment, contribution or payment for any party or any political purpose whatever, from any

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officer or employe in any department of the city government of any city which shall adopt this act."

"Section 23. *Assessments and contributions in public offices forbidden.* No person shall in any room or building occupied for the discharge of official duties by any officer or employe or employe in any city, which shall adopt this act, solicit, orally or by written communication, delivered therein, or in any other manner, or receive any contribution of money or other thing of value, for any party or political purpose whatever."

"No officer, agent, clerk or employe under the government of such city, who may have charge or control of any building, office or room, occupied for any purpose of said government, shall permit any person to enter the same for the purpose of therein soliciting or delivering written solicitations for receiving or giving notice of any political assessments."

"Section 24. *Payments of political assessments to public officers prohibited.* No officer or employe in the service of such city shall, directly or indirectly, give or hand over to any officer or employe in said service, or to any senator or representative or alderman, councilman or commissioner, any money or other veluable thing, on account of or to be applied to the promotion of any party or political object whatever."

The following is the opinion of Mr. Justice BRADLEY above referred to:

"I can not concur in the opinion of the court in this case. The law under which the petitioner is imprisoned makes it a penal offense for any executive officer or employe of the United States, not appointed by advice of the senate (an unimportant distinction, so far as the power to make the law is concerned), to request, give to or receive from any other officer or employe of the government any money, or property, or other thing of value for political purposes; thus, in effect, making it a condition of accepting any employment under the government that a man shall not, even voluntarily and of his own free will, contribute in any way through or by the hands of any other employe of the government to the political cause which he desires to aid and promote. I do not believe that Congress has any right to impose such

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a condition upon any citizen of the United States. The offices of the government do not belong to the legislative department to dispose of on any condition it may choose to impose. The Legislature creates most of the offices, it is true, and provides compensation for the discharge of their duties; but that is its duty to do, in order to establish a complete organization of the functions of government. When established, the offices are, or ought to be, open to all. They belong to the United States, and not to Congress; and every citizen having the proper qualifications has the right to accept office, and to be a candidate therefor. This is a fundamental right of which the Legislature can not deprive the citizen, nor clog its exercise with conditions that are repugnant to his other fundamental rights. Such a condition I regard that imposed by the law in question to be. It prevents the citizen from co-operating with other citizens of his own choice in the promotion of his political views. To take an interest in public affairs, and to further and promote those principles which are believed to be vital or important to the general welfare, is every citizens' duty. It is a just complaint that so many good men abstain from taking such an interest. Amongst the necessary and proper means for promoting political views, or any other views, are association and contribution of money for that purpose both to aid discussion and to disseminate information and sound doctrine. To deny to a man the privilege of associating and making joint contributions with such other citizens as he may choose, is an unjust restraint of his right to propagate and promote his views on public affairs. The freedom of speech and of the press, and that of assembling together to consult upon and discuss matters of public interest, and to join in petitioning for a redress of grievances, are expressly secured by the constitution. The spirit of this clause covers and embraces the right of every citizen to engage in such discussions, and to promote the views of himself and his associates freely, without being trammeled by inconvenient restrictions. Such restrictions, in my judgment, are imposed by the law in question. Every person accepting any, the most insignificant, employment under the government must with-

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draw himself from all societies and associations having for object the promotion of political information or opinions. For if one officer may continue his connection, others may do the same, and thus it can hardly fail to happen that some of them will give and some receive funds mutually contributed for the purposes of the association. Congress might just as well, so far as the power is concerned, impose, as a condition of taking any employment under the government, entire silence on political subjects, and a prohibition of all conversation thereon between government employes. Nay, it might as well prohibit the discussion of religious questions, or the mutual contribution of funds for missionary or other religious purposes. In former times, when the slavery question was agitated, this would have been a very convenient law to repress all discussion of the subject on either side of Mason and Dixon's line. At the present time any efficient connection with an association in favor of a prohibitory liquor law, or of a protective tariff or of greenback currency, or even for the repression of political assessments, would render any government official obnoxious to the penalties of the law under consideration. For all these questions have become political in their character, and any contribution in the aid of the cause would be contributions for political purposes. The whole thing seems to me absurd. Neither men's mouths nor their purses can be constitutionally tied up in that way. The truth is, that public opinion is oftentimes like a pendulum, swinging backward and forward to extreme lengths. We are not unfrequently in danger of becoming purists, instead of wise reformers, in particular directions; and hastily pass inconsiderate laws which overreach the mark they are aimed at or conflict with rights and privileges that a sober mind would regard as indisputable. It seems to me that the present law, taken in all its breadth, is one of this kind.

The Legislature may, undoubtedly, pass laws excluding from particular offices those who are engaged in pursuits incompatible with the faithful discharge of the duties of such office. That is quite another thing.

The Legislature may make laws ever so stringent to prevent the corrupt use of money in elections, or in po-

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litical matters generally, or to prevent what are called political assessments on government employes, or any other exercise of undue influence over them by government officials or others. That would be all right. That would clearly be within the province of legislation.

It is urged that the law in question is intended, so far as it goes, to effect this very thing. Probably it is. But the end does not always sanctify the means. What I contend is, that in adopting this particular mode of restraining an acknowledged evil, Congress has overstepped its legitimate powers and interfered with the substantial rights of the citizen. It is not lawful to do evil that good may come, there are plenty of ways in which wrong may be suppressed without resorting to wrongful measures to do it. No doubt it would often greatly tend to prevent the spread of a contagious and deadly epidemic, if those first taken should be immediately sacrificed to the public good. But such a mode of preventing the evil would hardly be regarded as legitimate in a Christian country.

I have no wish to discuss the subject at length but simply to express the general grounds on which I think the legislation in question is *ultra vires*. Though as much opposed as anyone to the evil sought to be remedied, I do not think the mode adopted is a legitimate or a constitutional one, because it interferes too much with the freedom of the citizen in the pursuit of lawful and proper ends. If similar laws have been passed before, that does not make it right. The question is, whether the present law, with its sweeping provisions, is within the just powers of Congress. As I do not think it is, I dissent from the opinion of the majority of the court."

106 U. S., pages 376–379.

Chief Justice WAITE, in the same case, in giving the opinion of the court, says:

"The act is not one to prohibit all contributions of money or property by the designated officers and employes of the United States for political purposes. Neither does it prohibit them altogether from receiving or soliciting money or property for such purposes. It

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simply forbids them receiving from or giving to each other. Beyond this no restrictions are placed on any of their political privileges."

After considering various acts of Congress, the learned jurist proceeds as follows:

"The evident purpose of Congress in all this class of enactments has been to promote efficiency and integrity in the discharge of official duties, and to maintain proper discipline in the public service. Clearly such a purpose is within the just scope of legislative power, and it is not easy to see why the act now under consideration does not come fairly within the legitimate means to such an end. It is true, as is claimed by the counsel for the petitioner, political assessments upon office holders are not prohibited. The managers of political campaigns not in the employ of the United States are just as free now to call on those in office for money to be used for political purposes as ever they were, and those in office can contribute as liberally as they please, provided their payments are not made to any of the prohibited officers or employes."

106 U. S., pages 372, 373.

Had the twenty first and twenty-second sections of the Illinois Civil Service Act been under consideration, or an act of Congress containing like restrictions, it is very plain that the reasons so clearly and so forcibly expressed by Mr. Justice Bradley would have produced from this court an unanimous opinion, stamping its seal of condemnation upon so flagrant a violation of the rights of the citizen. Then, too, Congress was not nor is it now restricted in its action by the Fourteenth Amendment, upon which we here rely. We, therefore, urge this case, *ex parte Curtis*, 106 U. S., 371, as directly in point and as fully and completely supporting our position that the said Civil Service Act of Illinois denies the freedom of political

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action, making it highly penal for the citizen as well as the office holder to take part in party politics by giving or receiving contributions, etc., as prescribed and set forth in Sections 21, 22, 23 and 24 thereof.

VI.

The said act of March 20, 1895, provides for the creation and maintenance of an office-holding class, at the expense of the people who are excluded therefrom, by the operation of the said act.

In the speech of Senator Carpenter, of Wisconsin, in resisting the report of a committee in regard to the Civil Service Act of Congress, that eminent constitutional lawyer said:

"Mr. President, in politics 'words are things.' 'Civil Service Reform' is a cunning catch word. Whoever is not in favor of reform must be in favor of abuses. This is the rapid logic by which some men hope to conceal their real purposes and commit us to ideas and theories which belong to monarchial governments. But change is not necessarily reform.

* * * * *

The great principle upon which our governments rests, the philosophy which supports all free institutions, is that the powers of sovereignty should be so distributed among different officers and bodies that each department shall operate as a check upon the others, and the concurrence of all be indispensable to the government's proceeding at all.

* * * * *

The fundamental philosophy of the report of the board is that the civil officers of the government should be held during good behavior and this in my opinion is a radical error. The report (page 3) commends as wisest and most reasonable the policy of removal only for cause. And on page 5 the committee contrasts the

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civil service unfavorably with the military and naval services and adds: 'there are modest, honest, and able citizens enough who would gladly serve the country for a moderate and permanent salary,' etc.

This leading idea of the report is altogether anti-republican and unconstitutional. This subject was much discussed when the constitution was adopted. Those who favored a strong government, and were most disposed to build upon the model of the British monarchy, desired a more permanent tenure of civil office; but their views found little encouragement and it was finally determined that none but the Judges should hold by such tenure. This exception in the case of the Judges was made for the reason that it was believed that they ought to be independent of popular control and placed beyond popular reach. This exception rests upon a reasonable foundation? Whether A or B is entitled to a particular estate depends upon legal principles and ought not to be effaced by a popular sentiment upon the subject. And unless the constitution in regard to the judicial department rests upon an erroneous theory it must follow that just in proportion as you make the other officers permanent incumbents you remove the government from the reach and control of the people. Every rule and regulation devised by this board looks to the accomplishment of this end and tends to carry into effect a principle which was purposely and carefully excluded from the constitution and has always been condemned by the American people.

Another leading idea of the report is that party is the bane of republican government; that to labor to secure the ascendancy of a party ought to fix upon a man a brand that should exclude him from public office. And the design of this system is to place all the officers within its operation beyond the reach of the people and to remove from them all anxiety in regard to the triumph or overthrow of any political party. The army and navy are officered upon this principle because their duties require scientific knowledge and long experience for their proper performance. For this reason the government furnishes education to a sufficient number of persons to officer these branches of the public service.

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But with civil officers the case is wholly different. In the frequent changes which take place in the heads of departments and in all subordinate offices no great public inconveniences have been experienced. The duties of civil officers are regulated by law; and any intelligent man may shortly acquaint himself with the duties of any civil office. But the law can not prescribe how a ship should be managed in a storm; how an army should handled in the face of an opposing force; how a fort can be carried by assault or a fortified place reduced by siege. The necessities of the case have induced an exception in this particular from the republican theory that a government for the people must be a government by the people, a government whose officers may be compelled to execute the public will by being constantly within popular reach."

Cong. Globe, Part 1, 2d Sess. 42d Congress, 1871–72, page 453.

Anglomania is chargeable with many of the evils of legislation with which we have to contend. The constant desire to introduce into our free institutions features of the British government, which to some seem admirable, lead them to the advocacy of radical changes in our system without consideration of the fact that by making such changes we are but adopting the very thing which was rejected by the fathers of the republic, and was one of the main causes for the separation in 1776. Among these features is life tenure for the public offices.

That this is the legitimate result of Civil Service laws can not well be denied. It may be that the General Assembly of the State of Illinois may make the offices and places of employment in any or in all of the cities of that state, subject to incumbents respectively with life tenure. Perhaps we may not be permitted to object to this under any existing constitutional provision of that state. It may be

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true that the General Assembly there is unlimited and unrestricted in this respect, but what we do strenuously object to is the means and machinery which this act under consideration furnishes with which to fill such offices and places to begin with and with which to provide for the removal of such incumbents and for the filling of vacancies because:

First. The act as a whole was made exclusively for the "Place hunters" (per Magruder, J., Rec., 101), for the "office seekers," for the "applicants."

(Per Mr. Justice Peckham as quoted, Rec., 101.)

We do not seriously object to the examination of candidates for office which shall be public and free to all citizens of the United States, but we most seriously and most emphatically object to the limitations of the provisions of this act:

First. As to classification.

Second. To applicants for the positions to which they severally seek to be appointed.

Third. To the requirement which prescribes that the appointing officer "shall fill such place by the ap-"pointment of the person certified to him by said com-"mission therefor."

Fourth. We object entirely to the competitive feature of the act. Instead of the open, generous and free competition in the political field, this act introduces competetion of an unknown and uncertain kind or kinds as to capacity under the ever changing and changeable rules of an irresponsible public employment agency denominated the Civil Service Commission. The act shuts out and precludes legitimate and necessary political action. It inaugurates the absolute necessity for a con-

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tinual strife for office by applicants, by place hunters, by office seekers, rewarding the successful competitor with the position which he seeks to occupy. The merit and fitness thus provided is confined exclusively to those individuals who conceive the idea that he or she wants public office or employment, usually to those whose convenience or necessity prompt him or her to make the requisite application for the same.

The creation of a class; the prohibition of any appointment to or employment in the public service of a city like Chicago outside of said class is destructive of the two great rights, privileges and immunities of every citizen, namely liberty and equality. The act thus silences the voice of the people and thwarts their will as expressed at the polls. Deny to the Mayor of the city the right to make any selection whatever in any office of consequence under his administration and do you not abridge the civil and political rights which appertain to such office? His official tenure has been fixed for two years; so too the official tenure of the Alderman and the most of the heads of departments and their subordinates. Usually in the election of a Mayor of the city measures which during his administration he should pursue, have been indicated by the popular will. Prevent him from bringing in to his aid those whose political tenets are in accord with such measures and you resist if you do not destroy such will. And right here we insist that this act is seriously at fault for it prescribes that:

"No questions in any examination shall relate to political or religious opinions or affiliations."

Is not this exactly where political tenets should be inquired into? If in the election of the chief magistrate of the nation, the people have used and manifested their

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approval of certain political tenets or proposed measures by a majority vote at the polls, why may not, why should not such tenets be required of any or all who are appointed or selected to fill the several subordinate civil offices and places of public employment?

VII.

And generally said act of March 20, 1895, is directly in contravention of the right of that clause of the United States Constitution, which prescribes that:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person the equal protection of the laws."

Every citizen is heartily in favor of securing efficiency in the public service and will favor legislation calculated to bring about that result. The enthusiasm, however, of many well meaning men, if not confined within proper constitutional and legislative channels, may unfortunately overwhelm and sweep away guarantees obtained by many years of popular struggle, the foundation upon which the American commonwealth has securely rested for more than a century. The Civil Service Law of the United States provides a method of selection by examination, but permits the heads of departments to decide as to the competency of the men selected, and to discharge them whenever it shall appear to such heads to be wise to do so. The Civil Service Laws of Massachusetts and of New York are of a somewhat similar charac-

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ter in that regard. The Civil Service enactment, however of the State of Illinois goes farther than either of the three. In addition to delegating the entire power of selecting men for official positions to a commission, no member of which is in any way concerned in or familiar with the work necessary to be performed for the municipality, it confers upon this commission the power of passing upon the qualifications of all men who desire to serve the public by accepting official positions, while it prohibits officers elected by the people or placed in charge of the several departments of the city government from selecting or attempting in any way to pass upon the qualications of, any of those whom they are obliged to employ, and upon whose work their own success or failure as administrative officers largely depends; it absolutely prevents the exercise of any discretion upon the part of the heads of any department in retaining or discharging persons once selected and certified to them by the Civil Service Commission, excepting as a trial of the question of the competency of the employe is held before the commission, and after the lack of qualification shall have been demonstated to the satisfaction of that body and an order of discharge by such commission shall have been entered and enforced. There are but two classes of employes excepted from these conditions. No discretion is permitted by the statute; the heads of departments must accept those certified to them by an outside tribunal, notwithstanding that they know that some whom they are obliged to accept are entirely unfit for the positions to which they have been assigned and though they may be dishonest and untrustworthy and not in harmony with the views of those under whose direction they are re-

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spectively placed. The law provides that the 10,000 employes of the City of Chicago in the event of a change of administration antagonistic to the newly elected officer selected by the people to direct the affairs of the municipality, many of whom may be tainted with dishonest methods which the newly elected officers were chosen for the purpose of reforming, may each demand a trial before the Civil Service Commission, and although the commission may exercise the greatest diligence and may devote their entire time for two years to the purpose, dedicating six hundred days to that work, the term for which the officers were elected, will have come to a close without a possibility being afforded for the investigation and disposition of to exceed six hundred cases. The ten thousand employes will know at the commencement of an administration that they can not be discharged except in the two instances referred to. Their tenure is for life. The heads of departments have absolutely no control over them. True, there is an opportunity to suspend for thirty days, but this is the only remedy afforded the officer to whom is intrusted the conduct of the city's business. The affairs of a great city can not be administered under such a system. Those who advocate the maintenance of a method of this character have had little or no experience with the actual operation. There is not a merchant on earth, there is not a corporation or business house in existence, which could carry on its business in the manner prescribed by this act without in three years' time becoming bankrupt. Where is the merchant who would be willing to delegate to the proprietor of an intelligence office the sole power to determine and pass upon the qualifications of his employes, not only at the time they were selected, but at

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the time he might desire to discharge them, and in case such proprietor thought the employe incompetent, might require his retention. What great business house or corporation could stand any length of time if its employes knew that before they could be discharged it would be necessary for their employer to prove to the satisfaction of an outside tribunal and by preponderance of the evidence that they were not qualified to transact the business for which they were appointed, particularly if they knew that with the utmost expedition their employer could at most remove unsatisfactory employes at a rate of speed not greater than one each day. No system ever was or ever will be devised which is better calculated than this to impede the transaction of public business, and to paralyze the efforts of administrative officers. The advocates of the law in their earnest desire to avoid some of the disadvantages attending the old system have proposed methods which are infinitely worse. It is not difficulty to see what must be the result of an attempt to enforce such a system in the offices respectively of the City Comptroller, Collector, Clerk, Treasurer and Superintendent of the Water and Meter Departments. In these offices the employes are called upon to receive or disburse daily not hundreds alone but thousands of dollars. To fill these places the commission has held examinations, and has tested the ability of many applicants. Those who succeeded in the examination were able to read, spell, write and cipher with a reasonable degree of skill, but no test general in its application was made, nor do I understand how it is possible for one to be made, of the fidelity and honesty of the applicants for positions. Without these two qualifications an employe would be

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worthless. What might be naturally expected, I am informed, did really occur as the result of that examination. The man at the head of the list, the one appointed to a position where at times not less than $200,000 a day would pass through his hands, was one whose habits were so extremely unfortunate that no man who knew him would think of entrusting to him $10. but against the protest of one of the heads of that department, and the protest of the sureties upon his official bond, the commission did not dare certify. Is it not more reasonable that the one who has undertaken the administration of the affairs of a public office, who is a man of financial and business standing, who has given bonds for the faithful discharge of his duty in some instances aggregating millions of dollars, would be better able to select his assistants than the tribunal knowing nothing of the conduct of the office, knowing none of the applicants for positions excepting as they appear in the examination room during one of two days, and that can of necessity feel none of the responsibilities for the safe keeping and the disbursement of the millions of dollars thus placed in public trust.

An examination was held for the position of police captain. Those who succeeded in spelling twenty words correctly, in solving six arithmetical problems, in copying accurately, in writing a letter, and in displaying in some other way certain mental qualities, and in passing an examination as to their physical condition, were placed at the head of the list. It is true that the length of service in this examination entitled the applicant for position to certain credits, but the main qualifications, those of courage, readiness in emergency, quickness in danger, tact, clearness and acuteness of mental vision,

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were not considered, nor do I know how it would have been possible for the members of the commission to whom these applicants were unknown to have made any satisfactory test as to these qualifications. It is true that there is a probationary period of six months after the applicant has been certified to determine his qualifications, but during this time even the probationer may not be discharged except upon a trial before the commission, so that the selection under this law of the fifteen police captains for the City of Chicago depend upon the ability of the gentlemen selected, to spell, write and cipher.

The applicants for positions are so numerous that in the tests which are made the ability of the applicant in orthography although not gaining a very high percentage is nevertheless sufficient to determine whether he shall become one of the fifteen police captains upon whose ability depends the lives of the citizens and the safety of their property interests. I do not know how the commission could possibly have examined in any other way, and I do not seek to criticise adversely their efforts in that direction. I believe that they have done as well as it was possible for any men similarly situated to do. They are unfortunately limited by unfavorable conditions. It is well known that among the applicants were many men who for years had been members of the police department of Chicago, but are not now members of the force. Some of them who were on the force at the time of the Haymarket riot and had taken part in that affair and possessed experience and ability; although these men were capable of at once stepping in to the position of police captains and performing the duties of that office satisfactorily, yet they were unable, in con-

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sequence of the limitations of the Civil Service Law, to enter for any examination excepting for that of patrolman; in case of their success they will each be obliged to spend each a year as patrolman before being permitted to take any examination for the position of sergeant, and then another year must be spent before they will be admitted to take the examination of lieutenant, and still another year before they are allowed to show their capacity in spelling and in ciphering and passing the examination for police captain. It is worthy of note that an officer of great efficiency who succeeded after a magnificent exhibition of courage, alertness and capacity in his line of work, in discovering and in bringing to justice eight thieves, could not be promoted by the Chief of Police who desired to promote him for his efficiency and for the effect that it would have upon the other men in the service, on account of the limitations of the Civil Service Law. It will be necessary for this man to wait his year and then be tested in arithmetic and spelling before he can be advanced to the next highest grade so that he may draw the salary which is attached to that position. He was advanced to the next position, but he is a patrolman only acting as sergeant and receiving a patrolman's pay. The law which renders the police force of Chicago subject to conditions of this character, which imposes these ridiculous restrictions is not in the interest of good government and is positively dangerous to the citizens of a great municipality. I refer from practical knowledge of the workings of this law, to actual conditions instead of and in answer to the theories elaborated in the opinion in this record.

It is neither possible nor desirable that those holding

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office should be free from political thoughts and even prejudices, but it is essential to the proper conduct of municipal business that those entrusted with the execution of the details of municipal work should be in entire harmony with the one who directs. In this line of thought I desire to submit an extract from a letter written by George Washington, the first President of the United States, with reference to an applicant whom he declined to appoint because he was not politically in accord and sympathy with the national administration of that day. He says:

"I shall not whilst I have the honor to administer the government bring a man into any office of consequence knowingly whose political tenets are adverse to the measures which the general government are pursuing, for this in my opinion would be a sort of political suicide. That it would embarrass its movements is most certain."

What would have been the condition of the United States during the years of the Civil War if President Lincoln had been subject to the limitations of such a law as this enactment in his appointments to office? At the time of his first inauguration almost every office in the country was occupied by one not at all in sympathy with the ideas of the incoming administration. Most of those in the public service were not only in harmony with but were absolutely hostile to the administration of governmental affairs during the period of the ensuing four years. Would the affairs of the country have been more wisely, safely, economically or satisfactorily conducted had President Lincoln been obliged by some such enactment as this to have delegated the selection of men in the Civil Service and volunteer service of the

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United States to an outside tribunal, accepted men for position not on account of their fidelity to their employers or loyalty to the Union or their honesty, not on account of their courage and endurance, but because they happened to hold a certificate stating that in an examination they had satisfactorily solved some arithmetical problem, and were able to read, write and spell twenty words correctly. Would the services of such men have given any higher satisfaction than those who were chosen under the old method? What would have been the result if the one hundred and fifty or two hundred thousand employes in the Civil Service of the United States when dismissed from office had demanded a trial and the privilege of showing their fidelity to the Union cause, their willingness to assist the administration, to put down rebellion and their competency to fill the positions which they had been holding? The trials would have been going on to this day however vigorously a Civil Service Commission appointed to conduct the trials might have acted. The efforts of the administration would have been retarded and obstructed and the government would have been crippled. It would have been impossible to have conducted the business required to be performed during the four years of the Civil War with persons in office who were hostile to the administration, and yet a law similar to this Civil Service enactment if adhered to would have obliged the heads of departments to continue in the transaction of public business with hostile men. For nearly one hundred years the system of allowing officers chosen by the people to make the selection of their assistants has been in vogue, and it is the only possible basis upon which a free government

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can exist. The New York law, which as I understand it, allows examinations, but permits the official responsible to the people to make his selection of all those whose names appear on the eligible list, and does not oblige him to take the first upon the list, is in this respect unobjectionable. That law also permits the discharge at any time of employes without a trial. Any other system must of necessity not only be unsatisfactory, but obstructive to the proper transaction of public affairs. It may be possible for the one municipality in Illinois, which is affected by this law, to endure it in case the law is held to be valid, but as certain as is the sun to rise to-morrow the people of that city will be obliged to and will in the near future demand such changes as will enable the city to transact its affairs.

I would not claim that the old methods could not be improved upon, but it may be truthfully said that during our entire history the greatest of political crises have been successfully met by officers chosen by the people assisted by men whom they have selected. It is true incompetent men have at time crept into office; and Civil Service enactment is no guaranty that the men selected for public position will always be found competent. On the contrary, so far as practice or even theory can discern, the number of men found incompetent under the Civil Service Law is comparatively greater than under the old system. I believe that a law could be framed permitting the Mayor and his chiefs to make selection from the eligible lists, admission to which should be by examination so far as many officers in the public service are concerned. Many appointments, however, are not susceptible of that kind of treatment, and any attempt to bring about a change of appointment for po-

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sition, such as captains of police, positions in in the offices of the City Treasurer, City Comptroller, City Clerk and City Collector will simply retard instead of aiding the transaction of public business. This enactment, proposed doubtless by well-meaning men, has had its first test since last April. Prior to that time, with few exceptions, all of the employes of the city government were appointed under the old system. It has only been, therefore, within the past few months that the law has been tried and its objectionable and obstructive features discerned. The effort of its framers seems to have been to make a law which in its effect would mold every employ into a machine incapable of holding political opinions and practically of taking any part in elections, and one of the chief objections to the Civil Service Act is found in Section 21, by the terms of which every employe is made a political eunuch incapable of advancing the interest of his country and deprived of the privilege of participating in political action. The section reads as follows:

"No officer or employe of such city shall solicit, orally or by letter, or receive or pay, or be in any manner concerned in soliciting, receiving or paying any assessment, subscription or contribution for any party or political purpose whatever."

In effect, the employe by that section is robbed of his political privileges, is deprived of the freedom of political action, is not permitted to take part with political clubs or political parties unless upon his entrance into his club or party he makes it a condition precedent that he shall not pay any money for the dissemination of political literature, hall rent or many of the other legitimate expenses incident to political action, and he is obliged to adopt this course under penalty as declared in

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the Civil Service Act of fine and imprisonment. Section 21 deprives him of one of the greatest privileges that can be accorded American citizenship—that of participation in public affairs. In effect it tells the employe that he may join a political club or party if he desires, but he must not pay any of its expenses. He must not write or circulate political pamphlets or assist in their circulation if it involves any expenditure of money unless others are willing to contribute. It deprives him of the opportunity of attending a political club unless he can find some one to pay his share of its expenses. A limitation of this kind upon the rights of an American citizen simply because he elects to serve the public is unquestionably in contravention of rights which are preserved to every citizen of this state by Section 1, Art. 2 of the Constitution of 1870, which declares, "That all men are by nature free and independent, and have certain inherent and inalienable "rights, among these are life, liberty and the pursuit of "happiness." There can be no question either that it is in direct opposition to rights secured by the Fourteenth Article of the amendment to the Constitution of the United States, wherein it is declared that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. By virtue of Section 21 citizens of Cairo and Alton and other municipalities within the State of Illinois may exercise the highest privilege of an American citizen, take part in any political action undisturbed by fear of the infliction of fine and imprisonment whether he holds pub-

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lic office or does not, but in the City of Chicago the man who holds office must do so with the understanding that he shall make no contribution for any political purpose, and must of necessity not join in any club or organization unless he stipulates in advance that other persons shall pay his share of the expense.

It is hardly necessary to say that:

"In constitutional law, liberty is something more than mere freedom from physical restraint. * * * It means freedom to go where one may choose, and to act in such manner, not inconsistent with equal rights of others, as his judgment may dictate, for the promotion of his happiness; that is to pursue such callings and avocations as may be most suitable to develop his capacities and to give them their highest enjoyment."

FIELD and STRONG, JJ., in *Munn* v. *Illinois*, 84 U. S., 142.

The same court in *Butcher's Union Co.* v. *Crescent City Co.*, 111 U. S., 758, defines Civil Service liberty as existing "only where every individual has the power "to pursue his own happiness according to his own views "unrestricted except by equal, just and impartial law."

The civil rights guarantied by the Constitution can not be made to depend upon the business in which one is engaged. This was the ground upon which it was held in *Kuhn* v. *Common Council of Detroit*, that an act requiring an affidavit that neither surety upon certain bonds was engaged in the sale of certain liquors was in violation of the State Constitution providing "that no "person shall be deprived of life, liberty or property "without due process of law," and the Fourteenth Amendment to the Constitution of the United States, and void, the right to sell liquor in that state being lawful.

Kuhn v. *Common Council of Detroit*, 14 West. Rep., 478.

The right of office is a constitutional right. "Eligibility to public trusts is claimed as a constitutional right which can not be abridged or impaired. The constitution establishes and defines the right of suffrage and gives to the electors and to various authorities the power to confer public trusts. It declares the ministers of religion shall be ineligible to any office; it prescribes in respect to certain offices particular circumstances, without which a person is not eligible to those stations; and it provides that persons holding certain offices shall hold no other public trust. Except in particular exclusions, thus established, the electors and the appointing authorities are by the constitution wholly free to confer public stations upon any person according to their pleasure. The Constitution giving the right of election and the right of appointment, these rights consisting essentially in the freedom of choice, and the Constitution also declaring that certain persons are not eligible to office, it follows from these powers and provisions that all other persons are eligible. *Eligibility in office is not declared as a right or principle by any express terms of the Constitution, but it results as a just deduction from the express powers and provisions of the system.* The basis of the principle is the absolute liberty of the electors and the appointing authorities to choose and to appoint any person who is not made ineligible by the Constitution. Eligibility to office, therefore, belongs not exclusively to electors enjoying the right of suffrage. It belongs equally to all persons whomsoever not excluded by the Constitution. I therefore conceive it to be entirely clear that the legislature can not establish arbitrary exclusions from office, or any general regulation requiring qualifications which the Constitution has not required." (*Baker* v. *The People*, 3 Cowen, N. Y., 322; 15 Am. Dec., 1824.)

And pertinent to this idea of the right of the citizen to be governed by laws uniform in their operation it might be well to avert to the position taken by the learned Judge Magruder, in that part of his opinion relating to the right of the Common Council of the City of

Chicago under the act relating to the incorporation of cities and villages to enact the ordinance which renders necessary the appointment of captains of police by the Mayor and their confirmation by the City Council. He holds that the Civil Service Law prevents the City Council of Chicago from taking such action, although up to the time of the enactment of the Civil Service Law there was no limitation upon its right to enact such an ordinance. The right never was and never could be questioned, nor can the right of any other city in the state to pass such an ordinance in the government of their own affairs be questioned until they shall have adopted this Civil Service Law, but it is held that the latter law prohibits in Chicago further legislation of that character.

The Civil Service Act is plainly in violation of Section 5, Article 2 of the Constitution and also of Section 9. Section 5 declares that "the right of the trial by "jury as heretofore enjoyed, shall remain inviolate." Section 9, that in all criminal prosecutions the accused shall have the right to a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed. Section 12 of the Civil Service Act provides that charges shall be investigated by or before said Civil Service Commission, or by or before some officer or board appointed by said commission, to conduct such investigation; that the finding and decision of such Commission or investigating officer or board, when approved by said Commission, shall be certified to the appointing officer and shall be forthwith enforced by such officer. Section 14 that:

"The Commission shall investigate the enforcement

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of this act and of its rules, and the action of the examiners therein provided for, and the conduct and action of the appointees in the classified service in its city. In the course of such investigations each Commissioner shall have power to administer oaths, and said commission shall have power to secure by it subpœna both the attendance and testimony of witnesses and the production of both books and papers relevant to such investigation."

Section 33 provides that any person who shall be served with a subpœna to appear and testify and who shall neglect to do so, shall, on conviction, be punished by fine of not less than $50 and not exceeding $1,000, or by imprisonment in the county jail for a term not exceeding six months, or both fine and imprisonment in the discretion of the court. By Section 33 any Circuit Judge throughout the state may, upon application of any one of the commissioners or any officer of the board, in his discretion, compel the attendance of witnesses and giving of testimony by attachment for contempt or otherwise, in the same manner as the production of evidence may be compelled before said board. The act, therefore, not only denies the right of trial by jury, giving the commission full and explicit power as a court to try and deprive the appointee of what has been made by the Civil Service Act a vested and property right, but it also gives authority to any Judge in the entire state to entertain a proceeding for contempt upon the application of any member of the commission, or any of its officers not only within but outside of the district in which the respondent may reside.

I am aware that in the case of *Donahue* v. *County of Will*, reported in 100 Ill., page 94, it has been held that

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a public office was not a property interest, but at the time of that decision the Civil Service Law had not been passed. Under this recent act, however, if the act can be maintained, an office in the classified service is a valuable privilege, is equivalent to a property interest for its tenure is during life of the occupant on condition merely that he is competent to transact its business. It is such a privilege and immunity as is protected not only by the Constitution of this state but that of the United States; but the Civil Service Act proposes to permit a commission to take away that valuable franchise without a hearing before a proper legal tribunal. The kind of trial and judgment by the commission provided by the Civil Service Act which gives the commission power to try any infraction of its rules, a violation of which is made a criminal offense is clearly in violation of the requirement that it should be before an impartial jury.

We would call the court's attention particularly to the distinction between the power of appointment to office, and the power to remove from office. The former, the power to appoint to public office by whomsoever exercised has been declared to be intrinsically executive. (See cases cited 19th American English Enc. of Law, pages 418, 419.)

The power to remove from office for cause requires the exercise of judicial power, in determining the cause, and whereas in this case, the power to determine the cause is conferred upon another than the appointing power under our constitution, it being an exercise of judicial power and not of discretion should have been conferred upon some judicial tribunal.

Acts or omissions upon the part of an incumbent which forfeit the right to an office do not forthwith render it

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vacant, and it becomes so only by the judgment of the court of competent jurisdiction, instituted for the purpose of removal of the officer.

Proceedings for the removal of an officer for cause are judicial in their nature and must be had before tribunals clothed with judicial powers. This doctrine is very fully discussed in the following cases:

Page v. *Hardin*, 8 B. Mon. (Ky.), 672.
Andrews v. *King*, 77 Me., 224.
Dullam v. *Wilson*, 53 Mich., 392; 51 Am. Rep., 128.
Charles v. *Mayor, etc. of Hoboken*, 27 N. Y. L., 203.
State v. *Pritchard*, 36 N. Y. L., 101.
In re Cleveland, 51 N. J. L., 311.
In re Nichols, 6 Abb. N. Cas. (N. Y.), 474.
57 How. Pr. (N. Y.), 395.
State v. *Prince*, 45 Wis., 610.

The cause of *Donahue* v. *Will County*, 100 Ill., 94, where it was held that a statute authorizing a County Board to remove a County Treasurer for nonfeasance or malfeasance does not contravene the constitutional provision vesting all judicial power in the courts is valid, we insist has no application to the case at bar. For we insist here that for the reason that the Legislature has created a tribunal outside of and beyond the appointing power and clothed it with the power to determine after a trial or hearing between the interested parties. That tribunal considers the law and the facts. It is a judicial inquiry—a cause in each case of complaint or charge has to be made; this requires not only allegation but proof; the law of plead-

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ing the rules of evidence, and all the principles of jurisprudence applicable to the exercise of judicial power become involved. In the Will County case it was apparent at the outset that the Treasurer was a defaulter. No judicial inquiry was necessary. The fact was self-evident to the county authorities. They had before them the delinquency of the Treasurer. They had caught him in the act. They had the power of a motion hence they had a right by a summary proceeding to discharge him for what was self-evident. It is true that the learned Judge who gives the opinion in that case, prompted undoubtedly as the court was urged to, regarded the case or the facts in the case as raising in its broad sense the constitutional questions that are really involved in the present controversy. We, therefore, urge it as an independent proposition that the proceeding for the removal of an officer for cause where an inquiry is necessary to determine that fact where charges are to be preferred and a defense may be interposed where a trial may be had, where a judgment must be rendered and that judgment may be one of acquittal or deprivation of the office, the proceeding should be had in view of the Federal Constitution only before tribunals clothed with judicial power. We would commend to the attention of this court the case of *Dullam* v. *Wilson*, *supra*, and *Charles* v. *Mayor of Hoboken*, 36 N. J. L., 101; *In re Cleveland*, 51 N. J. L., 311. This proposition we believe to be so plain and indisputable that it is conclusive as to the unconstitutionality of the Civil Service Law.

The very theory of the act, is to create permanency of tenure in office and added efficiency. That the government is entitled to retain its employes in office, that it may get the benefit of the increasing knowledge and

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facility in service which comes from continuance in office; and that the tenure being *secure*, during good behavior, capable and trustworthy men, will seek the office, having assurance of retention; and that the appointments and discharges shall not be made according to the whim and caprice of the appointing power. The law thus was intended to create a property in the office and the theory, if carried out, ought to remove the danger of discharge arising from the prejudiced action of a commission assuming unlawfully to exercise all the functions of a judicial tribunal. But such is not the Civil Service Act now under consideration.

That an office is a property right has been declared by a number of courts. One case is that of *Wammack* v. *Holloway*, reported in the 2d of Alabama, at p. 33. The court says:

"An office is as much a species of property as anything which is capable of being held or owned; and to deprive one of, or unjustly withhold it, is an injury which the law can redress, in a manner as ample as it can any other wrong. (2 Black. Com., 263; 2 *Ib.*, 36, 4 Bac. Ab. Office G., 297.) An office being a species of property, it is evident that conflicting claims to the right to hold it must be decided in the same constitutional manner, as well as all other claims respecting property. It is certainly true, that the old writ of assize of office, has long since fallen into disuse, by the introduction of a more convenient remedy, by information in the nature of a *quo warranto*, in which proceeding, the franchise is usurped, is seized by the state, and then conferred on the rightful claimant. The redress is not the less efficient, because the suit is conducted in the name of the state."

The tenth section of the bill of rights provides that no one shall be deprived of his life, liberty or property, but by due course of law; and the twenty-eighth section or-

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dains that the right of trial by jury shall remain inviolate. It is apparent, if the latter section was omitted, then there would be no constitutional prohibition of laws by which one might be deprived of life, liberty or property, if under the constitution, such a court was so constituted as to consist of one or more judges; but with that section, as it stands incorporated in our fundamental law, no citizen or the state can be deprived or debarred from the right of trial by jury in all cases when it is allowed by the common law.

We need not cite authorities to prove that by the common law, no one can be deprived of the right to exercise or hold a civil office, but by the judgment of his peers, as we have already shown, that an office is a species of property.

The same principle was recognized in the case of *Hoke* v. *Henderson*, reported in the 15th of North Carolina, at page 17. The court declared as follows:

"The sole inquiry that remains, whether the office of which the act deprived Mr. Henderson, is property. It is scarcely possible to make the proposition clearer to a plain mind, accustomed to regard things according to practical results and realities, than by barely stating it. For what is *property;* that is, what do we understand by the term? It means, in reference to the thing, whatever a person can possess and enjoy by right; and in reference to the person, he who has that right to the exclusion of others, is said to have the property. That an office is the subject of property thus explained, is well understood by every one, as well as distinctly stated in the law books from the earliest times. An office is enumerated by commentators on the law among *incorporeal hereditaments;* and is defined to be the right to exercise a public or private employment, and to take the fees and emoluments thereunto belonging. (2 Bl. Com., 36.) A public office has been well described to be this: When one man is specially set by law, and is compella-

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ble to do another's business against his will and without his leave, and can demand therefor such compensation, by way of salary or fees, as by law is assigned; to the doing of which business no other person but the officer, or one deputed by him, is legally competent. (Carth., 478; Leigh's Cas., 1 Mumf. Rep., 475.) That the purpose of creating public offices is the common good is not doubted. Hence most of the rules regulating them have a reference to the discharge of the duties, and the promotion of public convenience; they are *pro commodo populi*. Hence they are not the subjects of property in the sense of that full and absolute dominion which is recognized in many other things. They are only the subjects of property, so far as they can be so in safety to the general interest, involved in the discharge of their duties. This principle demands that different rights of property should be recognized in different offices. It is one of the ordinary rights of property to alien and dispose of it at pleasure; but that is inadmissible in public offices, because the public require a responsible person to answer for defaults. Besides, the power of alienation is not the test of property; for doubtless it is within the scope of legislative authority to restrict it or deny it—as in the laws which prescribe the ceremonies necessary to the validity of wills, or conveyances of infants and married women, and which deny altogether the power of conveying, and which interdict all conveyance made *in mortmain*. It is another ordinary right of property to have the power of substituting another person to manage it, or to let it lie idle and unmanaged. But the former is not allowable in some offices, and the latter in none. The chief executive office and judicial offices can not be delegated, while subordinate ministerial ones may. For there would be no security that, in the former cases, the delegate would be competent, and no responsibility of the superior would be adequate to answer the consequences. Though in the latter it is otherwise. But *non user* is punishable in all public offices, and at the election of the public is a forfeiture. So a misdemeanor or corruption in office may be punished by judicial sentence in any manner prescribed by law, including a motion as for a forfeiture.

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These are all restrictions and penalties to secure the public service, which is the object in creating the office. But with these limitations and the like, a public office is the subject of property, as every other thing, corporeal or incorporeal, from which men can make a livelihood and make gain. The office is created for public purposes; but it is conferred on a particular man and accepted by him as a source of individual emolument. To the extent of that emolument it is private property, as much as the land which he tills, or the horse he rides, or the debt which is owing to him. Between him and another man, none will deny the right of property. For if one usurp an office which belongs to another, the owner may have an action for damages for the expulsion, for the fees of office received, and a remedy by *quo warranto* to inquire into the right of the usurper, and by *mandamus* to be himself restored. When we find these remedies established to enforce the right of admission into office, to secure the possession of it and its emoluments, we cannot no longer doubt that in law an office is deemed the subject of property and valuable property to the officer, as well as an institution for the convenience of the people. If it be so, it falls within these provisions of the constitution which secure private interests."

The Civil Service Law unlawfully delegates legislative functions to the commissioners. Article 4, Section 1 of the State Constitution provides that "the legislative power shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives, both to be elected by the people." This legislative power can not be delegated, but the Civil Service Act gives power to the commission to pass such rules as they may see fit respecting applications to public office, and the qualifications, conduct, retention and discharge of those who make application therefor. Indeed, power is given to the commission beyond that which is delegated to the legislature itself. The Commission of Chicago may frame

one set of rules having the force of laws while in another part of the state another city may enact legislation of an opposite character. The Commission in Chicago may enact a law that no one above the age of 35 years shall be admitted to the public service. The Commission in Cairo, if one be established, may enact that no one shall be admitted to the public service under the age of 35. There is apparently no limit in the power which is conveyed to the commission by this act as to the character, quantity or quality of the laws which it may enunciate. This law provides for special *legislation*—a different operation of the law in different localities, or indeed, a different law, in different localities.

It is not an answer to respond that this may not be so, and that it may be presumed that the Commissions in the different cities will adopt different rules. Whatever may have been the intent of the Legislature they are not obliged by the law to do so. The character, and the constitutionality of the law is to be determined, not by what may be believed to have been, or was, the interest of the lawmakers, but by what is the necessary operation of the law.

Brimmer v. *Rebman*, 138 U. S., 81.
Minnesota v. *Barber*, 136 U. S., 313, 319, and authorities cited.

At the inception of the government two principles were contended for, one, that which is embodied in the Civil Service Act, a life tenure of office, and the other, rotation in office, but the wisdom of the Commonwealth found in favor of the latter course, and for nearly one hundred years has consistently upheld that principle. As was argued one hundred years ago, so with equal force

may it be adverted to at the present time that the maintenance of the present Civil Service Law means the establishment of a privileged office-holding class by a tenure which cannot be disturbed, owing allegiance to no one, and intent only upon increasing the dignity or emoluments incident to the positions which the members of that class may hold. The Civil Service of the United States government numbers nearly two hundred thousand men. The Civil Service of the City of Chicago, if the contention of the petitioner in this case is upheld, will be not less than twelve thousand persons. If the theory is accepted that the act is beneficial, and it is extended to every city in the country, the number of those who will be gathered within its class can not be far less than a million persons. The Civil Service employes of the United States government have their Civil Service Association and organization for their own protection, advancement and assistance financially and otherwise. It is not difficult to have here with an army of nearly a million persons in the United States, armed not with the weapons of the Pretorian guards, but with the ballot, an organization just as powerful and one which would be able to dictate through the power which they themselves and their friends could exert the future policies of the United States. Advantageous as such a body would undoubtedly be in a monarchical government interested in sustaining its own life tenure and a life tenure for those in authority over them, yet the existence of such a body in this country working for its own advancement and with an inclination naturally to sustain measures that will help its members, would be a standing menace not only to the welfare but to the very integrity and existence of our form of government. The applica-

tion and extension of this law incompatible as it is with our form of government is, in my opinion, one of the most dangerous foes against which a republican form of government has to contend.

In addition, we also claim that Sections 12, 33, 34 and 35 of the Civil Service Act, and each of them, are null and void because they violate that provision of the Constitution of the State of Illinois, known as Article 2, Section 2, which requires that no person shall be deprived of life, liberty or property without due process of law, and because also it is in violation of the Fourteenth Amendment of the Federal Constitution, which forbids the enactment of laws of that character by the state. The said sections are also in conflict with Article 2, Section 5, of the Constitution of Illinois, guaranteeing to each citizen of this state the right to trial by jury, and of Article 2, Section 9, which guarantees to the accused in all criminal proceedings a speedy trial by an impartial jury in the county or district in which the offense is alleged to have been committed.

The act is also void in that it violates Section 22 of Article 4 of the Constitution of the State of Illinois, providing that the General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say, for incorporated cities, towns or villages, or changing or amending the charter of any town, city or village.

VIII.

And lastly, plaintiff in error avers that said Act of March 20, 1895, generally denominated the "Civil "Service Act," is absolutely null and void, because the same purports to require the civil officers of the City of Chicago to undergo tests as qualification for office and public employment in addition to the requirements of

Section 25 of Article 5 of said Constitution of the State of Illinois, not only in contravention thereof, but of the general principles of popular government, and because it provides for a political test for the said Commissioners respectively therein named, and because, further, the same is in contravention of Section 22 of Article 4 of said Constitution, as well as many other provisions of said state Constitution, and of the Constitution of the United States.

There are thirteen words in the Constitution of Illinois, which, if words have any meaning whatever, absolutely prohibit the tests for civil office which are prescribed by the Civil Service Act. They need never have been put in there. For the only test that can be applied must be in the Constitution itself. Having prescribed the oath of office as a test it was wholly unnecessary to declare further, viz.: "And no other oath, declaration or test shall "be required as a qualification."

Take away the Civil Service Act and all the citizens of Chicago are eligible to the offices and places in the classified Civil Service of the city. Make the classified service subject to the conditions and restrictions of the Civil Service Act and no one is longer eligible. All are made to start with, ineligible; this is the legitimate effect of the act; to become an eligible one must make application for being tested by examination under and pursuant to Civil Service rules.

And yet over the constitutional prohibition that "No "other oath, declaration or test shall be required" before anybody now can get even the menial position of scrub-woman in the City Hall, she must be subjected to competitive examination with all other applicants for the position. "Such examinations shall be practical in

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"their character and shall relate to those matters which "will fairly test the relative capacity * * * and shall "include tests of physical qualifications and health "and when appropriate of manual skill." See § 6, p. 13, *supra*.

These are tests; they are *other* tests; hence they are inhibited by the state Constitution.

Oath of Civil Officers. All civil officers, except members of the General Assembly and such inferior officers as may be excepted, shall, before they enter on the duties of their respective offices take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm as the case may be) that I will support the Constitution of the United States and the Constitution of the State of Illinois and that I will faithfully discharge the duties of the office of according to the best of my ability."

And no other oath, declaration or test shall be required as a qualification. (Section 25 of Article V of the Const., of Ill.)

As well as by fundamental principles of popular government.

Attorney Gen. v. *Detroit Common Council*, 58 Mich., 223.

Although the constitution may not contain any limitation on the power of the Legislature in conferring the appointing power for municipal officers, yet it is a principle of republican government that such officers should be appointed by the local authorities.

Per GRAY, J. (*Rathbone* v. *Wirth*, 150 N. Y., p. 467.)

"The habit of local self-government is something we took over, or, rather, continued from the English system of government, and, as Judge COOLEY has remarked with reference to the constitution of the states: 'If not expressly recognized, it is still to be understood that all these instruments are framed with its present existence and anticipated continuance in view.' (Constitutional Limitations, 35) The principle is one which it takes but little reflection to convince the mind of being fundamental in our governmental system, and as contributing

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strength to the national life in its educational and formative effect upon the citizen. It means that in the local or political subdivisions of the state the people of the locality shall administer their own local affairs to the extent that that right is not restricted by some constitutional provision."

We therefore ask that the order and judgment of the Supreme Court of Illinois of December 22, 1897, be reversed and for such other order or direction as to this Honorable Court shall seem meet.

All which is respectfully submitted.

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